

# YOUTH IN THE TOILS



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## YOUTH IN THE TOILS



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# Youth in the Toils

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*LEONARD V. HARRISON*

*PRYOR McNEILL GRANT*

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1938

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## Foreword

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IN PRESENTING to the public this study, "Youth in the Toils," it is appropriate to state briefly its origin and purpose.

Seven years ago two of the leading non-sectarian family welfare agencies in New York City—the Association for Improving the Condition of the Poor and the Charity Organization Society—recognized the increasingly serious problem presented by homeless boys and the lack of specialized services for meeting their needs. Accordingly, they jointly organized the Boys Bureau which has since operated as a department of the two organizations in caring for homeless and unattached boys 16 to 21 years of age. From the first, the Boys Bureau has met daily the many personal problems faced by boys who have been in trouble, without homes, funds, or jobs. When needed, food, lodging in wholesome surroundings, clothing and incidentals have been provided. In addition, through its staff of trained and experienced workers, help has been offered in working out the deep complex problems of human relations, of strained emotions, lost courage, broken faith and lowered morale—the intensely personal things which are not so simple as material assistance but so much more important.

As the work of the Boys Bureau developed, the Committee responsible for its operation became increasingly aware of the number of delinquents among those coming for help. Appreciating the importance of the delinquency problem and realizing that they knew very little about it, a subcommittee, the Delinquency Committee, was appointed to make a study of the field in New York City. As a first step the Delinquency Committee asked Pryor McNeill Grant, of the Boys Bureau staff, to work several days a week among the boys being held for trial or sentence in the Tombs Prison.

After this work had been carried on for somewhat over a year the Committee realized that in order to begin to understand and appreciate the delinquency problem in New York City, it must have a knowledge of the situation confronting the delinquent boy from the time of arrest to the moment of release. To study this problem Mr. Grant devoted his full time for a number of months in making an intensive survey of the relation of the system now used to deal with the delinquent boy with delinquency itself.

The Delinquency Committee was so much impressed with his report and so challenged by the facts presented that Leonard V. Harrison was retained to work with Mr. Grant in the preparation of a report which would go beyond fact finding and make specific suggestions and recommendations as to changes in the existing system. This study is the result of their collaboration.

Mr. Harrison is a criminologist who has made outstanding researches in police and other social problems. Mr. Grant has devoted his life to work among boys and has given much time and thought to the study of social and religious movements. This combined professional background has contributed to the making of a well-balanced survey and appraisal of the lessons of experience.

In commending this report to the attention of the public it is realized that the study has been confined primarily to New York City and that the problem has been dealt with only in the broadest of terms. It is hoped, however, that it will serve two purposes: first, to present a concise picture of a very real social problem which exists in substantially the same form in every large city of the country and, second, to arouse sufficient public interest so that others will take up the question and give to it the time and study necessary if a satisfactory solution is to be reached.

It is with very real appreciation that acknowledgment is herewith made of the valuable help and cooperation received from New York City officials and from those to whom the manuscript was submitted.

THE DELINQUENCY COMMITTEE

JOHN D. ROCKEFELLER, 3RD, *Chairman*

DANFORTH GEER, JR.

GEORGE M. HALLWACHS

EDWARD L. RICHARDS





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It is with deep regret that the Delinquency Committee records the sudden death of Pryor McNeill Grant on December sixteenth, just as this book was going to press. Not only was he the founder of the Boys Bureau but it was his work that made possible this report. We, who have been associated with him, have been inspired by his vision, his untiring effort, and his devoted interest in the problems of youth. As we approach the future, we feel a real loss in the knowledge that we will no longer be able to avail ourselves of his long experience and wise counsel.

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## YOUTH IN THE TOILS



# I

## The Aims of Criminal Justice Administration

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THE American system of criminal law, having its roots in English jurisprudence, has been developed over the centuries for the preservation of government and for the protection of private citizens in their enjoyment of personal liberty and security, property rights and other privileges of free citizenship. Before the reign of law an injured person, or someone acting for him, retaliated as he saw fit in righting any wrongs done to him. The modern state, unwilling to allow its citizens to wreak their private vengeance, has substituted a public system of retributive punishment for offenses. Many prohibited acts have been defined as criminal offenses and punishments have been prescribed therefor in the penal code. Every crime came to be regarded as an offense against the state, and machinery of criminal justice was set in motion to apprehend the offender, determine his guilt and punish him. The state's aim was not limited, however, as was that of the individual before the establishment of law, to making offenders suffer in retribution for the wrongs they had done. It had the further aim of deterring others from committing similar offenses. In

addition, the system of correctional treatment, theoretically at least, acquired the purpose of treating offenders in such a way as to bring about their ultimate reformation.

Recent years have seen a marked shifting of emphasis from the principles of retaliation to principles of rehabilitation of offenders. This has been accomplished by legislation making it possible to modify the punitive treatment of convicted offenders by such means as suspension of sentence, probation, indeterminate prison sentence for first offenders, and parole. In so far as these new devices are utilized, progressive administrators of criminal justice are concerned less with measuring out an amount of punishment that seems to fit the crime than with considering the effect that punishment may have on the offender.

Dosages of punishment of themselves yield relatively little benefit to society. What society is mainly interested in is stoppage of attacks upon the security of its members. This may be accomplished either by reforming offenders or by incapacitating them through coercion. Imprisonment incapacitates them from the commission of new offenses and it serves to some extent doubtless as a deterrent to others. Society is protected for a time by imprisonment of offenders, but arrangements that inflict upon them variously calculated amounts of punishment, for punishment's sake, are of no value. Retaliation may be sweet to the injured individual but is barren in its yield to society as a whole.

The criminal justice system, we hold, should encom-



pass but a single basic aim, namely, the protection of society. To attain this end requires on the one hand better and more effective methods of rehabilitation, and on the other more permanent types of coercion. Collateral aims of vengeance and retribution, as we shall see, disastrously interfere with the task of reforming offenders—particularly youthful offenders—charged with serious crimes. If the intermediate ends of incapacitation and deterrence could be achieved equally well under a system which excludes retaliation, the ultimate end of protecting society would be better served.

#### THE DETERRENCE FACTOR WEIGHED

How effectively does punishment of criminals by imprisonment operate as a deterrent to others who are disposed to delinquency and crime? The disheartening volume of recidivism among released criminals shows clearly that an astonishing number of those who have themselves suffered punishment are not deterred from commission of new offenses after their release from prison on parole or upon expiration of sentence. Moreover, the steady flow of new recruits to crime indicates that continuous exemplification of the law's penalties works very imperfectly as a restraining influence. Many, certainly, are inhibited from committing offenses because of a possible reckoning. How many, we cannot know, nor can we know how many would be as effectively restrained under control measures less severe than incarceration in reformatories and prisons.

It is certainly easy to overestimate the deterrent value of severe mandatory punishment. The reason for this lies in the failure to recognize the part that reliance on chance plays in the lives of most criminals. The gambling spirit is one of their tell-tale characteristics. These chance-takers range from the moderately cautious to the reckless. Few of them think that they will be caught when they commit a planned offense. On the contrary, they commit their crimes only when they believe that a good chance of escaping unnoticed has arrived. If any other belief enters their minds they desist. Nor are those who commit an offense on an impulse, or in a passion, mindful of possible consequences. They do not think at all. In neither case does the existence of severe legal sanctions weigh heavily in the offender's calculations.

There is another important aspect of the deterrence factor. It is usually not so much the thought of how *severe* the punishment may be that deters a potential offender, as the thought that some kind of reckoning will ensue. Mere detection and intervention by the authorities are enough. Probability of detection is what counts most; it is the police who deter.

From these considerations it is possible to conclude that crime deterrence is more dependent upon initial events related to the commission of an offense than upon the remote effects of harsh punishment. If this is so the value of punishment, either for punishment's sake or as a deterrent, loses the force of unquestioned utility. Once this is admitted the way is cleared for

acknowledging that reformation of offenders should be the first objective of a system of criminal justice and that imprisonment should always be a secondary resort following upon failure of attempts at reform.<sup>1</sup>

#### REFORMATION THE PRIMARY AIM

It is our reasoned conviction that the treatment, whether it be by punitive or non-punitive methods should always fit the offender, not the offense. An experienced Governor of an English prison recently observed that the population of his prison was made up in equal parts of those who ought never to have been sent there and of those who ought never to be released. We do not know what the proportions are in this country. But, like the English prison Governor, we think too many offenders are sent to prison to be reformed and too many of the unreformable are being let out for no better reason than expiration of their sentences.

Although the present penal system now aims primarily at punishment, a host of enlightened judges, district attorneys, prison keepers, legislators and parole and probation officers are doing everything they

<sup>1</sup> The Illinois Prison Inquiry Commission in its report (1937) to the Governor pointed to the failure of imprisonment as a deterrent. "That incarceration has failed as a crime deterrent," observed the Commission, "is obvious when the increase in penal population is considered." Quoted in *New York Times*, Apr. 25, 1937.

For an extended and informed discussion of the failure of punishment as a crime deterrent see Chapter XVIII, *Prisons and Beyond*, by Sanford Bates. The Macmillan Co., 1936.

can to shift the law's emphasis from vengeance to rehabilitation, especially in the case of youthful offenders—the group with whom we are here chiefly concerned. But they are working under an inescapable handicap both of a code and of procedures that are geared to the purpose of inflicting punishment for punishment's sake as well as for purposes of incidental deterrence. We shall examine the subject of reformation at greater length in its appropriate place. What we wish to summarize here is: (1) that society as a whole gains no benefit from inflicting punishment as a matter of retribution even though a few individuals may enjoy a satisfaction in knowing that the culprit will be made to suffer in return for suffering inflicted; (2) that the severe punishment of some offenders is not a decisive factor of deterrence to others, rather it is their fear of being caught and controlled for an unspecified period of time; and (3) that the criminal law, legal procedure and court organization, in so far as these relate to offending minors, should be revised and adapted primarily to the end of stopping a potential career of crime by rehabilitation.

If it seems that this is striking at the tap-root of the traditional punitive system of criminal jurisprudence it should be remembered that the system already has been all but uprooted by indeterminate sentence laws, by acceptance of pleas of guilt of lesser crimes than those actually committed, by parole, and by an individualized and psycho-therapeutic treat-

ment of offenders in prisons and reformatories. The present system is clumsy because it is partly punitive and partly remedial. The punitive aim, on the one hand, becomes diluted with mercy and amelioration, and reformatory efforts, on the other hand, are undertaken too late—after punishment has had its hardening effect.

As long ago as the reign of Athelstane in the tenth century when death penalties in England were common, it was enacted that efforts should be made to reclaim minors found guilty of serious offenses against public security: "If his kindred will not take him, nor be surety for him, then swear he as the bishop shall teach him that he will shun all evil, and let him be in bondage for his price. And if after that he steal, let men slay him or hang him, as they did to his elders." <sup>2</sup>

After ten centuries of contending with criminals we find that there is no more sensible way of stopping a youthful criminal career than to follow this ancient practice of first undertaking to rehabilitate the offender by means of a mild form of compulsion which seeks to enlist his willing cooperation. Failing in that endeavor, it obviously becomes necessary for society to coerce the individual.

The social aim of courts in seeking to protect society against the criminal should be the *unmaking* of youthful criminal careers, not retributive punish-

<sup>2</sup> *Judicia Civitatus Lundoniae sub rege Aethalstano edita*, Cod. Ross. f. 88.

ment. This should begin when court jurisdiction over offenders is first established. Present procedures, in respect to serious offenses at least, first stamp offenders as criminals in compliance with mandatory requirements of the penal code and thereafter attempt, under the most disadvantageous conditions conceivable, to recondition whole groups set apart as a criminal class. The branding of a criminal status as a preliminary to reform of youthful offenders seriously impedes, if indeed it does not utterly defeat, the end sought.

It is true that some offenders would fail to take advantage of non-punitive, remedial treatment. It may be necessary to order the permanent segregation of those who cannot, or will not reform. Prisons then would exist for the incapacitation of those who apparently cannot be rehabilitated after a trial under more favorable conditions of life than they have known before. It is our judgment that offenders who are reformable under the present extremely adverse conditions of prison life could be more successfully salvaged outside of prison, by other more socially constructive arrangements.

## II

### Grist for the Mill

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THE general public forms its opinions and attitudes about crime and imprisonment with little or no first-hand knowledge. A cell-to-cell visit in an ordinary detention prison would reveal much and be an experience that few people are allowed to have. Administrative officials themselves, with all of their experience, often lack the kind of knowledge that is necessary for understanding and dealing adequately with the problem. One experience with a dangerous or desperate character frequently makes them take precautions that affect all. They are too often concerned almost exclusively with their own duties of custody, catering, sanitation, and accounting. And the problems of human beings, especially in their individual variation, go unattended. The kindness that develops in no inconsiderable amount is crude and the humor that relieves the grimness of the situation itself is grim and insensitive.

It should be observed, however, that the system itself is primarily at fault rather than its administrators. The strange thing is that few persons have taken time and thought to consider the individual offender, and to measure him against some other

yardstick than that of statutory law and penal administration.

The situations of the boys in the following accounts raise questions not contemplated in the penal law. They have been brought to light through personal contact with boys met in the Tombs Prison in New York. In presenting them here the intention is to set forth the nature of the problems which a more adequate service to delinquent minors would find awaiting it, rather than to record carefully checked scientific case studies.

It should be emphasized that these cases are not to be regarded as representing a cross section. They are selected, frankly, as illustrative of the kinds of situations which can scarcely be dealt with satisfactorily under the present criminal justice system.

#### FOUR BOYS HELD ON CHARGES OF GRAND LARCENY

Of four boys held on the same charge, grand larceny, two are sixteen and two seventeen, all neighborhood friends. One had recently moved to a better section of the city but returned always to the old block for companionship. He was the chief actor in the play that landed them all behind bars, remorseful and disturbed that his poor judgment and rashness had brought trouble upon him and his friends. Their lives had all been lived within narrow economic and cultural bounds, but they had not developed into "anti-social" beings.

Each was different, but each likable and friendly.



One was an Italian who, though sixteen, had been required to be in the house every night of his life and go to bed at an unusually early hour. Another was an Irish boy, normally of a gay and happy temperament, but in the strain of confinement and disgrace, on the verge of tears. The third was Scotch, with fair complexion, light hair and blue eyes, quiet, self-contained, more cordial than normally, perhaps to cover the embarrassment that he clearly felt. The fourth, leader of this gang, was English. He was tall, slim, with a more rugged spirit than frame. There was a suggestion of restlessness and unhappiness about him that found expression when he began to talk. His whole nature had long been straining and rebelling at some of the frustrating conditions of his life. First of all, there was his father, a silent, moody, disappointed man who sometimes went days without speaking to his family, and sometimes months without taking his wife or children anywhere. The son's solution of the problem thus created was to leave it. He wanted to enlist in the Navy and "travel." He had just turned seventeen and was ready for the fulfillment of his long-dreamed plan. Now he was in jail and a conviction would close the door to his dream. He of all the boys most needed corrective attention. He disliked both his job and his employer. He worked in a general market where he did all the things that the regular employees would not do, delivering at odd hours, cleaning up refuse, staying overtime, and the like. On Saturdays he worked eighteen hours. For this

and three other days' work a week his boss paid him five dollars. The final break came on the Fourth of July when he worked most of the day without extra pay.

His resentment led him to plot revenge. Frequently, he was sent to the bank to deposit sums of money. It would be easy to take some and just disappear. He couldn't quite agree to simply take it. That would be stealing and he was no thief. He rationalized his conflict; he would "borrow" the money, go elsewhere, buy a good job, pay back what he had "borrowed" and come back some day having solved his family's problem. He developed the theory that if he only left the state he would be perfectly safe.

He did not communicate all of this to his friends in the old neighborhood. He told them about the money, but he omitted telling them how he was going to secure it. They were intrigued by the plan but gave no great credence to its actualization. One afternoon he appeared with five hundred dollars in cash. His friends had never seen so much money. They were excited and untroubled by the source of the money. The scheme to buy a second-hand car, go to "another state," all get jobs, good jobs, pay back Johnnie's boss, and be independent for the rest of their romantic lives was within grasp.

They proceeded to carry it out. A car was bought with a seventy-five dollar deposit. They did not go home for clothes or farewells. Even the Italian youth, to whom home had been such an ever present reality,

found it possible to forget. Johnnie was the hero he had always pictured himself. He drove the car. One of the group, Scottie, was on a relative's farm upstate, so off they went to get him. With the gang complete, someone suggested it would be nice to stop a while at a camping place not far away and "enjoy themselves" for a week or so before leaving the state. It was so decided and they settled in for the night.

Night has a disturbing effect upon humans away from home for the first time, especially if there is an element of conscience to add its discomfiture. "Irish" was most affected by it. He claimed to be ready to go on with the plan if they would not delay departure to the other state. When they refused to leave the quiet contentment of a little vacation for more important things, he slipped away home. The next day Tony used the same argument which, together with a severe attack of nostalgia and conscience, enabled him to find his way back. The other two held fast. The idea that the money would now go further was Scottie's, but it appealed equally strongly to his fellow Britisher, and they carried on.

Naturally their parents were alarmed. The boss had informed Johnnie's father of the money. Inquiry at Tony's home revealed their whereabouts. Johnnie's father proceeded to the spot, accompanied by a policeman, and soon, one by one, all four were behind bars charged with grand larceny. The car was returned and all but sixty dollars restored to the boss, who was outraged and angry.

Johnnie was held in fifteen hundred dollar bail, the others in five hundred. True to form, Tony's family arranged bail for him at considerable sacrifice. The others, after a few days of disturbed feelings, settled down to a jail routine to await the operation of the legal machine. It was summer, and in summertime the machine grinds more slowly. Young spirits get more flattened and more lacerated by long delay.

They did not whine, though they rebelled at the situation that confronted them. They were as sorry for what they had done as boys caught in the consequence of their deeds could be. They tried in vain to discover anything very reasonable about the scheme in whose toils they were caught. Their idea was to work and make full restitution. All but sixty dollars had been recovered. The idea of the four being denied pleasures and indulgence of all kinds until the money was paid back in full had disciplinary possibilities. By the time it was accomplished they would have learned a valuable lesson and they could not reasonably harbor resentment towards everything and everybody in blind induced sullenness. They might regret the occasion and necessity of the lesson, but they would lay the blame at no other door than their own.

Delinquency may here be seen as an opportunity for society in dealing constructively with some delinquents. At present, it goes unperceived and misinterpreted. There is required not only a shift in the philosophy of law but also men of imagination and purpose capable of dealing with such situations.

## ROBBERY CHARGES SCALED DOWN

Two boys of eighteen and one of seventeen, friends of long standing, were charged with what, next to murder, is considered the most serious crime, robbery armed. They were caught in the act. Their greatest difficulty was to explain to themselves and others why they had done it. There was no question about the deed; question existed only about its explanation. So far as could be judged from conversation their friendship stirred ideas that ran painfully counter to reality. Strangely enough it was not a rough-and-tumble world of ideas where every man was for himself. It was a world of chivalry, a false and warped chivalry indeed, with relations of distraught proportions and values based on no clearly considered premises. But it was not more jumbled than the kind of world most adolescents find themselves in at some time.

Two of them had jobs. One was paid twenty-four dollars a week and the other sixteen. They were interested in their jobs and learning something. They both had homes. The other chap, their common pal, was an orphan. Unsympathetic relatives had gotten tired of his idleness, put all the blame for his unemployment on him and cast him out, forgetting that twelve million other people in the country were unemployed. The other two, stirred by his problem, decided to rearrange his fortunes at a stroke. If he had just enough money for a start he could buy a job at an agency and with funds and work he could have a

home of his own. It was a simple plan. A little "easy money" was all that was needed.

Armed with a pistol they entered a shop near midnight, its closing time, emptied the till of its fifty dollars or so, and jumped into a taxi-cab. Two blocks away they were arrested.

Days passed, thirty-five to be exact, before the Grand Jury was presented with the crime of these three youths. They had long since settled down to the certainty of being "sent away," although at intervals hope would rise up with desperate force and make them ask "if something couldn't be done." They never became morose. They got used to the grim, but friendly sallies of the keepers about the long sentence they would get and the appointments and service of their next "hotel." The mildest of the trio, the one who actually held the pistol in his hand, became accustomed to the bantered title of "trigger man." The splendid loyalty of their employers, who engaged counsel for them and promised them their jobs whenever they were released, the daily visits of one of the boys' relatives, the realization of their own stupidity, the feeling that nothing like it would occur again, made them continue to believe faintly that they might be given a chance.

They were permitted to plead guilty to "attempted robbery in the third," though why it should be called "attempted" is hard to understand, except that after completing it they were caught and the booty was returned to the owners. The chance to juggle the

charge, however, is one of the brakes put upon the law by its administrators.

The plea was arranged with little knowledge of the boys or of their capacity for reform by means of measures other than imprisonment. It was purely a matter of whittling down the length of the penal term, not social treatment. The act, not the actors, had precedent significance. It was, in brief, a "legal" way of showing mercy upon the culprits.

The alternative to the system as it exists is not a complete lack of system. It would be no service to society or to the boys at point here to overlook their act or to condone it. Nothing of the sort need be or could be suggested. But what is done with them must have relation to what can be done with them for their own and hence for society's best good. No other principle is either social or intelligent.

#### BURGLARS DISMISSED BY GRAND JURY

"I don't know what all the baloney is about. We admit getting into the place. It's all over a few apples which was all the stuff that was there. We didn't even take them. Why don't they do something and get it over with?" This was not said with a snarl by a "tough guy" trying to show his contempt for the law and society, but by an alert, exceptionally attractive boy who could easily pass for less than his sixteen years. It expressed his own restlessness and wish to be endlessly busy.

He was the youngest of three boys charged with

the crime of "burglary;" the other two were seventeen and eighteen, respectively. It was vacation time and there was "nothing doing around home." Jimmie had hitch-hiked to Chicago "just to be moving." Being without money he did not stop long enough to see the city, but turned back towards New York. A friendly truck driver brought him nearly the whole way and about 3 A.M. left him off at a point near his home. He went into the park near by to wait for daylight. There he discovered by chance two boys whom he had met recently while swimming "off the dock." They were homeless with no other place to sleep and they were hungry as well. Jimmie knew a restaurant in the neighborhood with a cellar blocked off merely by loose boards. Possibly they could get to the refrigerator.

They tried and soon got in; the removal of one board admitted them. They started for the floor above but before they reached the stairs, a policeman flashed his light on them and another took them in hand. The officers looked around. A crate of apples, which was all that could be discovered, was taken "for evidence." At the station house Jimmie pretended he was homeless and fifteen. The pretense failed when three days later something was said about sending him to "an orphan home." He decided the truth was better. The discovery that he was sixteen somehow made him a different kind of person. He was transported forthwith to police headquarters to be fingerprinted and photographed, then to a station house,



to Magistrates Court, to jail. There he rejoined his friends.

Tom, aged seventeen, left home two years before to escape the family quarrels, which ensued whenever his father ordered him to do things to which his mother objected. She, as by habit, always objected and took his side, gaining a peculiar satisfaction by stubborn contrariness. After a time it became irksome to Tom. One day he told his mother he was going to end it all by leaving home. She strangely enough raised no objection. Fifteen found him adrift and alone, with a parental warning no more illuminating than a mere "take good care of yourself." A postcard to her from a western city was never acknowledged. He had not troubled to write since. A few jobs as errand boy and the sale of newspapers kept him in food and shelter most of the time.

The other boy had a home, but his parents were divorced. His mother had remarried not long since. It was hard to stay at home "for some reason" after that and he had gone to a married sister. Then he lost his ten-dollar-a-week job. After three weeks of idleness he decided he was an intruder and left. He had met Tom at the river; Tom had a furnished room and shared it with him. Tom's money from newspaper sales was not much and failed to stand the strain of supporting two. The room had been given up the night before and they were in the park together when Jimmie happened along. Now they were held as "burglars." They must wait for the Grand

Jury to indict them. It was during this period of listless waiting that Jimmie couldn't see "what all the baloney was about." To break into a place in the dead of night is burglary. Possibly later it may be decided that it was merely "unlawful entry" which is a much less serious matter. If nothing is stolen, either because there was nothing to steal or no time to do it, it changes the whole problem—legally.

Who the boys were, what they needed, or what they were capable of, were questions of little moment or importance. Jimmie, obviously bright, alert, attractive, was not interested in school. To him it seemed a waste of time. "What's the use of fooling around with ancient history? What good's that going to be to anybody?" He wanted to work with motors, be "doing something all the time," "taking things apart," "learning something useful." He talked about the aeroplane models he had at home, adding quickly "but that's only kid stuff." He said he had "part interest" in a motor-cycle and suddenly quoted statistics as to the large number of deaths from motor cars, and "practically none from motor-cycles." He had taken the motor apart and put it back together many times.

Law has no interest in these things and no way of perceiving or evaluating them. From the law's point of view everything centered on what these boys had done. They did not present challenges to society's capacity for giving redirection to boys who are without moorings and disposed to serious delinquency; they were challengers of society. The fact that boys

do not think in terms of "society" does not come within the ken of the law.

The Grand Jury acted in shorter time than usual and dismissed all three. Why, was not divulged. Nothing that occurs in the Grand Jury room ever is.

Upon dismissal of the charges the responsibility of the legal system ceases; no thought is taken about what will happen to those who are released. No sense of social, as opposed to legal, responsibility, and no idea of social opportunity characterizes the law's procedures with boys like these. They are treated instead to the experience of arrest, of going to court, of being fingerprinted, photographed for the rogues gallery, handcuffed, transported with others in police wagons, locked in cells for twenty-two hours a day alone, and spending the other two hanging over the rails of the tiers discussing with other boys the causes of their imprisonment. When it is over, it is easy to see that it can have the glow of a lurid experience upon it. Such boys become heroes in the eyes of others who listen to the stories they weave about the "inside" of jails and courts and police stations. They find themselves "big shots" twisted and warped in their estimate of social values, the purveyors of false ideals to other boys.

If these boys had been charged with delinquency and efforts had been made to give them needed guidance, their burglarizing exploit might have been turned to good account. But the penal code defined their offense as a felony which called for too much

punishment under the circumstances. Accordingly, they were turned loose—victors in their first major contest with the criminal law. The punitive code had been administered with mercy, and the boys unquestionably made worse by it. Was the leader of the group so far wrong in his “baloney” characterization?

#### GRAND LARCENY AND SOILED LINEN

A boy of seventeen occupied a cell. By birth he was half Negro and half white; socially and by common custom he was all Negro, although his negroid characteristics were scarcely perceptible. Blue eyes from his Irish mother and light brown hair displaced a first notice of peculiar pigmentation. He was noticeably bright. His intelligence was the basis for a first sally into his friendship. Before exploration into his intellectual interest had proceeded very far, he drew a wallet from his pocket, and, out of a compartment reserved especially for it, he took an object, unwrapped it carefully and showed it with proud modesty. It was a gold medal, pinned by a ribbon to a silk-covered cardboard, soiled by time and handling. The date on it showed that he had it three years. On it was written “Scholarship.”

Three years ago his mother died and with her going came interruption of all that lay before him and seemed so likely of fulfillment. He wanted to be “a teacher of algebra.” School was the source of happiness and achievement. After his mother’s death “nobody seemed to pull for him” or feed his young

spirit with anything comparable in subtle satisfaction with those things his mother inspired simply and steadily. He was not aware how clearly he revealed his devotion and dependence on her and how unfilled was the place she had occupied. He hardly spoke of her, but when he did it gave insight into his life, both past and present. Mixture of blood seemed to bring no conflict in him. All his associations were with the colored group. He identified himself with it and indicated no desire to have it otherwise. Others seemed aware of a difference in him, however. "They say I am queer or something, and that they don't understand me. I don't know what it is."

He was seemingly unaware of the superior qualities which were recognizable upon contact. Indeed, they were dangerously near eclipse at seventeen. It was somewhat baffling that he was so without belief in himself. He had stopped school two years before to look for work, but the jobs he had had were temporary and unremunerative. Search for work had been sincere but unenthusiastic. He wanted to be in school, but the indifference of others left him listless and the insensitiveness and meagre income of his father gave him no margin or latitude to indulge his desires.

All this came with burdening effect before occasion arose to ask what had brought him to jail. It was "nothing really," he said. He was charged with grand larceny. A co-defendant who admitted the theft of goods from a truck verified his innocence. He had just met this friend in the street and was standing

talking to him when a policeman descended on them. The package contained household effects, chiefly used linens, taken without knowledge of its contents from a truck that had halted at a traffic light. The boy who took it claimed it could not possibly be worth more than fifteen dollars; the owner set its value at one hundred and twenty-five dollars. In one instance, it would have been petit larceny, triable, without indictment, in an inferior court; in the other instance, it was grand larceny, a felony, and handled by another court. In the process the thief became a mere pawn of definitions, property value more important than human, and a chance bystander a victim without rights.

The law nowhere specifies this lack of interest in the individual, but neither is the law conceived in terms that might meet the issues involved either realistically or ideally. Law is needed, but law set towards what goals and employing what instruments?

#### AUTOMOBILE THIEVERY

Crime statistics place automobile theft high in the order of frequency of all felonious crimes and ascribe a considerable part of it to boys in their teens. Rarely if ever, however, does any note accompany these findings to explain that this form of thieving among boys is generally without commercial advantage or purpose, but is usually merely for "a joy ride" or an immediate convenience.

Furthermore, a great many of these boys are not the original "thieves" at all. "I didn't know it was stolen" is claimed time and time again. This is an easy alibi, but anyone who has had occasion to deal extensively with such boys knows that in many instances it is absolutely genuine. A boy takes a car, drives up to his friends and invites them for a ride. Rarely will he announce it is a stolen car. That would rob the event of its elation and him of a sense of superior wellbeing. It is a "cousin's" or an "uncle's" car. Boys to whom the possession of a car is an almost undreamed pleasure jump in. When they are apprehended, explanations are blankly and routinely rejected. How can a policeman tell? If the boy who took it assumes all the blame, as likely as not he will not be believed. He is accounted a liar in a hero role trying to get the others off.

Another type of automobile "thief" is not infrequently met. The one at point was a ready-spoken, friendly youth of eighteen who was mystified, as others, by an irresistible impulse to take cars, drive them a few blocks, and abandon them. It was his third arrest within a year on the same charge. How many times he had done it without arrest was not known. A car with its key left carelessly in its place had an uncanny attraction for him. Whether on an errand from his job or on his way home he would simply have to get in and drive off. He never drove far. There was no plan in his exploits, no deliberate

mischievous, no revenge, or malice. He rarely knew the owner. Fortunately, this boy was not clever in covering his tracks. In fact, he made no effort to. Except in the moment of excitement, the whole thing worried him intensely. He raised the question of his own sanity. If there were any place that would help him he would gladly go to it. He was happy at home. His family was sympathetic, even if worried and distressed. His father had gotten him out of previous messes with loyal willingness. He was standing by in the present instance in a way genuinely appreciated by the son, sorry for the trouble he seemed to be continually causing.

This general view of the situation was easily attainable. Yet it had no place in the police approach to what the boy had done. Technically, he had stolen a car. At least he had entered a car that was not his and had driven off in it. That is a crime and that is all that legally matters. Whether in a particular instance it is a misdemeanor or a felony depends upon the estimated value of the car. Owing to a recent purchase of tires, the value of this particular car had crept slightly above larceny par—a fateful fact in dealing with the complex of emotion and impulse that was the boy who took it.

That the police should be the agents to act in meeting such a situation once it has arisen is obvious, but that there should exist nothing but a jail to deal with persons involved after apprehension, and before trial, is a fact that intelligence and social mindedness



both challenge. The alternative to incarceration, awaiting a court's decision as to whether he committed theft or not, is not freedom to continue his action unhindered. He, more than others, wanted protection from such freedom. He was not whining about being in jail. He was asking for help to understand and cease his actions. But even with psychiatric treatment and the most social attitude displayed toward his problem, a record of grand larceny would stand to haunt and frustrate the years ahead. If he is cured, this is unjust. If he remains uncured, grand larceny is a meaningless description and unjust still.

#### GANG THEFT OF AN ABANDONED AUTOMOBILE

Three boys, aged sixteen, seventeen and eighteen were in the detention prison charged with the crime of stealing an automobile. The oldest was a Greek, intelligent, friendly, impulsive, disturbed by his arrest but screening his feelings behind an engaging smile. The chance to talk was eagerly seized, but before his woes were half related, tears broke through his smile. Lack of background soon became obvious. He had left high school to look for work. No regular job was found in a whole two-year period. There was no one in his life to guide him towards special training or to fruitful uses of the opportunities of the city. Vigorous athletic interests for a year past had diverted an earlier uncriticized acceptance of sexual promiscuity, but the remembrance and philosophy of it lingered to set his standards and ideas of human relationships. To

him his were the usual, even the proper, standards for normal youth.

His likable qualities and his possibilities were the more noticeable because of his background of determining conditions and circumstances. He had a home of sorts but his parents inspired no ideals for him. His youth seemed doomed to waste.

The next oldest boy, seventeen, was a handsome, mild-mannered youth, of unstirred ambitions, likewise accustomed to conditions that offered few outlets and advantages. He too was limited in his interests and capacities by poverty of opportunity, but he appeared capable, friendly, attractive. He seemed hardly a "criminal type." He was worried most about his widowed mother; as for himself, he was trying to take his present predicament "standing up."

The sixteen-year-old was much more upset, but cheerful withal. He inherited a disconcerting succession of consonants for a name, but was himself completely Americanized, a happy, hearty boy, upon whom the worries of life had but recently and suddenly come. His father, a tailor, was eking out a bare subsistence for his large family. There was no chance for bail; a thousand dollars seemed a fabulous sum.

Each boy told the same story about the stolen car without variation. They all seemed to realize how poor their judgment and reasoning had been, but their sincerity was the more established by the weakness of their excuse. No one would have manufactured their story for ready acceptance.

Their tale was like this. For three days, a car stood on their block, unmoved and something of a mystery. It was a poor section of town, part of "Hell's Kitchen" where cars are symbols of many longings, secret signs of things forbidden to those who live on a mere margin of existence. To boys, denied what cars can give of longed-for pleasures, they have more than ordinary associations, garnered from the tabloid exploits of bold gangsters or from the street-corner yarns of bolder "lovers." In any case there was something sinister about this invasion of their block. The car did not belong there. They knew that. Possibly it had been stolen and abandoned. Possibly it had been driven in a robbery. Possibly it had been used to take someone "for a ride."

Any of these explanations, if proved, might involve the fellows who belonged in the block. Whatever its history, it had to be moved. It was a clear question of safety first, for them and their pals. Upon investigation the key was found in it, so at midnight they undertook their self-appointed service and set about moving the car into a neighborhood street. The unfortunate lot of the boys of the block in which it would now be found gained no consideration. Certainly, it had no restraining effect.

It was fun to be in motion and they took a ride farther than the neighboring block. But finally they drew up at the planned spot, having successfully accomplished their exploit. As luck would have it, however, they found themselves directly behind a police

radio car. If their consciences had been clear that could have made no difference, but being suddenly aroused it caused them to move on more awkwardly than was good for their case. The police car followed, suspicious. When they attempted to abandon it they were questioned. There was reason enough to take them to the station house. There the car was discovered to have been stolen. What else should happen but they be accused of its theft? Their protests contained a note of outrage at such an idea, but they could not fail to heed the evidence. They were forthwith introduced to the process of arrest; handcuffs, and steel wagons at frequent and unexplained intervals, precinct station house, pens, fingerprints, pictures for the rogues gallery; court, jail, unfeeling indignities carried through by kindly and well-meaning human cogs in a system of indifferent routine, unpalatable food served as to animals; isolation, paddock-like recreation on narrow tier walkways; days of waiting for something, anything, to happen.

The problems presented by these boys would obviously not be solved by blandly believing them. They would not ask that themselves. But such boys are ready to be dealt with reasonably, that is, in terms of helping and teaching and warning them so that they become more definitely integrated into the social structure. A means of handling them without threat or hurt, with interested regard for their completest good, is a patent need.

## FROM A BAD SITUATION TO RUIN

A twenty-year-old youth, tall, slim, friendly, stood before the bar of justice, charged with grand larceny. His sallow complexion and faint suggestion of a lurking tubercular condition had explanation in his homelessness and serious struggle in recent months for bare existence. His widowed mother died when he was fourteen, and under the gentle sway of a nun in his school his loss was smoothed by thoughts of the priesthood. The little money left by his mother carried him a year in a pre-seminary school but when it was exhausted its gates closed behind him. A relative harbored him for a period and he found work in factories and restaurants. He had lived alone most of the time for the three years past, holding to ideals of decent living and even to the hope of the priesthood. The security of the priesthood in striking contrast to his loneliness and unemployment made it even more alluring. No special sense of vocation was apparent, but a loyal and undaunted wish to carry on with what had obviously been a sincere ideal had never left him. The thought of it all was brought to awareness and expression once more under the spell of a sympathetic interview. It was a welcome experience after the past ten days. Among all the hypothetical doors that might by some miracle be opened to him when the nightmare of jail was over, that upon which was written "school" was the most alluring.

Open doors to one in a jail have a clear appeal, but rarely are doors of opportunity the ones envisaged.

It was six o'clock in the morning when he was arrested. He had risen early, as was his custom, to inquire at certain restaurants for work. The manager of one referred him to a friend far uptown who needed a man. He had twenty-five cents left to his name. A job of some sort was a desperate necessity. As he entered the subway a man struggling with two suit cases offered him a quarter to help him. It was a good omen at the beginning of a so anxious day. A quarter was a quarter and of more than ordinary value under the circumstances. The platform was reached. Suddenly a man rushed in with accusing shouts and commotion. "Beat it, kid, before you get pinched," said the boy's employer, running with all speed, not to be seen again. The boy stood still, bag in hand, not understanding the situation immediately. He was apprehended, possessed of the bags. Their owner was irate at the theft and angry over the fact that his vacation, begun thus early in the morning, had been delayed. The boy protested in vain. That the bags were stolen a few minutes before from an automobile was news to him. He had responded to a chance to make a quarter. The man who had taken them was a total stranger to him. He could give no information about him.

It is customary for police officers and others to completely ignore such stories. They are too obviously false. No officer of the law, whose duty it is to suppress

the "enemies of society," could be so credulous. The effect on a person of being disbelieved, doubted, rejected, is of no account. The police officer was concerned with "facts." The stolen bags were there. The boy admitted possession. They were worth more than a hundred dollars. He must be charged with a felony; it is so defined "in the book."

The boy had already been led from the subway to the police station with no special dignity. There was no lack of notice along the way and pity, curiosity, and indifference were mingled indiscriminately. He was taken to court with others. In a closed steel car he was taken to police headquarters, fingerprinted, photographed, put in a line-up, haled to court, left for a week in the district jail, finally arraigned and brought to the city prison to await indictment and trial.

In court he declared he could trace his movements, prove his contention and objective, but he could not provide bail and he could not get outside to find "witnesses" to bear out his story. There was no one who would do it for him. He did not know the names of the people he saw that day accurately enough for a dictated message through the jail-keeper to have any effect.

Finally after ten days of helpless waiting he "waived examination" to take a chance on the Grand Jury's dismissing the charge. He did not know that the Grand Jury does not hear his side of the story. The complainant and the arresting officer do not believe it.

He does not realize that days or weeks may pass before it is presented to the Grand Jury and days or weeks, or months more, before it is placed on the court calendar. Meanwhile, he must accommodate himself to a rigid routine, to a custody based on distrust and indifference to his own views, hopes, desires, intentions, a routine in which there is no one with whom he can even talk about them. He is a prisoner and helpless to do anything about it. There are days ahead when decisions affecting his whole life will have to be made. Is it impossible to devise a criminal justice system that will make the decisions before such boys are embittered and contaminated?

#### GRAND JURY DECLINES TO INDICT

The mother of an eighteen-year-old colored boy sent him with a message to an aunt who lived a few blocks from their home. It was Sunday afternoon and he had on his best clothes. The sense of well-being which clothes give to all people, especially to young people, put far away all thought of foreboding evil. Suddenly he became aware of excitement in a group of boys across the street. In search for the cause he recognized one of them as a boy he had prevented from "crashing" a party given by his club the previous week. This boy when challenged and ejected had threatened him; there was nothing uncertain about what would happen if the insistent doorkeeper ever appeared in the other boy's neighborhood.

The boys across the street began to run in his direc-



tion. The time of retribution had apparently come and he set out as fast as he could. Two blocks away he found his pursuers had been swallowed up in the crowd and their place taken by a policeman who was almost upon him. In a few seconds he was rolling in the dirt, Sunday clothes and all, and a moment later was in the hands of the law, which in the person of the policeman, was none too gentle or considerate of its prey. He was conducted in embarrassing triumph to a police station and charged with assaulting and robbing a shopkeeper a few blocks away. No booty was found on him, no gun, no evidence other than his earnest flight and evident fear of apprehension. Denial was no use. His story gained only blows in the face, and when felled to the floor, kicks in the stomach. The testimony of his mother regarding his presence in the home and his movements covering the time of robbery was rejected as prejudiced. He made the usual rounds from station house to police headquarters, to detention cell, to magistrate's court, to detention cell, to jail. Twenty-two days later the Grand Jury failed to indict him, but they were twenty-two days of outraged feelings that skilled interviewing and a modicum of investigation at the time of arrest could have obviated. His family could not meet the high bail set. He was employed. He had never been arrested before. The routine of police beating, of isolation, of idleness, of official inaction, embittered him. He was too young and too tense to meet the situation calmly and objectively.

When the twenty-two days were over he had no ground for reimbursement for the loss of his pay or the mental suffering he endured. Fortunately, his employer was more considerate than the law and he did not lose his job, but he might well have done so and gone months in search of another.

#### STEALING LEAD PIPE

Walter, sixteen years and two months old, a slim, nice-looking lad of about a hundred and twenty pounds, stood before the "desk" glad to be relieved of handcuffs. He was direct, a little emboldened by his arrest, undisturbed, playing the man. Asked if he had ever been in an institution before, he said, "Yes, I was in the Protectory." He did not mention the fact that he was eleven at the time and was sent there for truancy.

"They can learn a lot in that place," remarked a keeper knowingly when a fellow keeper raised the question of his being put in the section of the prison with institutionally experienced youths. But there he was assigned. This meant that Walter was put in with those assumed, rightly and by the system itself, to have been contaminated by contact with the system.

The situation was just one more item in the mounting list of Walter's misfortunes. Walter's mother died when he was nine. His father, who had been rich and poor alternately several times, had tried to raise him,

but he was pre-occupied and at heart uninterested. Walter did as he pleased. It might have been disastrous if from somewhere he had not gained qualities that made him lovable and essentially reasonable. How such a boy had escaped the attention of church, school and social agency, to see that he be given at least the elemental necessities of home and supervision, is hard to explain. It happens constantly, of course, and the discovery comes late, in jail, in venereal clinics, in divorce courts, in the shadow of other mile-posts on the road of failure and defeat. It might have happened to Walter when he was eleven if anyone had treated the causes of his truancy instead of punishing it, or had given him love instead of what he got in the institution to which he was sent in loveless indifference to the things a child must have to grow into a man.

Walter disliked school, in spite of being intelligent. School had unhappy meanings. At sixteen he had no trade and no goal. He had food and shelter and a "home," but not too much of the first, no spending money, no guidance, no stimulus to inspire dreams of purpose and a place in life.

"I was hanging around the block and they said did I want to go out and get some money. I said all right. We went to a house and got lead pipe. We did it about a week before I was caught. The others got away."

It was as simple as that. A week's "work" netted

him a dollar—and arrest. Lead pipe in vacant houses, he found, was not as valuable out of them as had been alleged—and it was “burglary” to get it.

In the security of an interview with someone who seemed to want to help, the whole situation brought tears to his eyes. They stole upon him unawares and when he discovered them he dashed them away. But they came. He wanted his father told where he was, and he also wanted a certain “friend” of his to know. This friend proved to be a policeman. Walter gave his telephone number from memory. One day a year ago he had been riding on a truck with another boy going to the hospital to see this boy’s mother “who had gone there to have a kid,” and the policeman had thought they were stealing something from the truck. He pulled them off and questioned them, but he did it in such a way that both found a friend. When he learned their situation he warned them about getting into trouble and told them to come to him “if anything happened.” He showed them ways of looking for work and tried to get Walter a job. Walter “talked to him a lot.” He had not handled all of Walter’s problems or seen them in perspective, but he had made friends rather than enemies of two young suspects and followed them up. In jail Walter asked for his policeman friend, ashamed of himself, but confident still of the friendship.

Questions rise inevitably in the face of a situation like this. What is the significance of calling this boy a burglar, of isolating the fact that he, in company with

other boys, broke into a vacant house and stole lead pipe? Why should a legal system take precedence over a social situation or why indeed should not the money required to indict, try, punish, be used to recondition the situation? Why should a boy be held for weeks, confined with experienced companions as Walter was, in order to allow a clumsy, sluggish system to function merely because arbitrary conditions of bail could not be complied with? Another person in different circumstances could have been released upon the payment of a fifteen-dollar fee paid to a professional bondsman. What is gained for him or society by sending him to the reformatory, as was done, because the system fails to provide a constructive plan for help?

#### ROBBERY WHILE DRUNK

A seventeen-year-old boy, six feet tall, was tense almost to the danger point, his brown eyes at one moment piercing his interviewer for answers to unuttered questions and at the next shifting from object to object in search of something that might perchance bring peace. He wanted to talk even if it must be inarticulately.

"I didn't know what I was doing. I was drunk. I don't remember nothing about it."

Bill was an individual set wild by alcohol. One beer, two, and he was headed for trouble. On the fatal occasion in question, he drank seven or eight. Quantity calmed him for a while. He set out for home. In the subway he fell asleep. When he awoke, he got out,

neither knowing nor caring where he was. He felt "dizzy." Things tumbled over one another before his eyes—and apparently in his brain.

Suddenly he entered a restaurant. Putting his hand in his shirt (he was already coatless) he said to the man behind the counter "Stick 'em up, gimme the cash out of that register."

"Get it yourself," said the man.

Bill proceeded the long way around the counter, all but ignoring the man who, perceiving the situation, hurled a bottle in his direction. Bill turned in flight, pursued first by the counter-man but soon by others, including a policeman. He was all but shot at. The policeman had his pistol in hand, ready to fire, when another policeman appeared and seized the fugitive.

"I don't remember nothing after I said 'stick 'em up.' I know I ran. I don't know why I did it. How much time can they give me?" "Gee, I wouldn't rob anybody. It was the beer. I was drunk. I wish my mother would come to see me. What's the longest time they can give me?"

It was obviously comforting to him to be able to talk to someone, even to a stranger. He accepted a cigarette gladly and smoked it nervously. He was grateful, friendly, even gentle, but terribly tense. No faintest flicker of a smile lighted his face. His mother had not communicated with him. This fact seemed to worry him the most. "I'd feel better if I could talk to her."

Bill's father was dead. "If he had lived, I wouldn't

be here." It was a loyal excuse, and he seemed to mean what he said. He had graduated from junior high school and had worked in a grocery store for some months until he was laid off. For three years, while still in school, he had worked on Saturdays at the same store. Apparently he had been satisfactory and reliable. In spite of his age, he escaped from idleness by enlisting in the C.C.C. He was sent to the south but left after two months "because of the heat."

Indictment came. His lawyer advised pleading guilty to attempted robbery in the third degree. Trial on the original charge of robbery in the first degree would have involved the risk of too many years in state's prison. The facts were clear. He had gone into a shop and said, "Stick 'em up;" he had advanced toward the cash register; he had run; since he had continued to struggle with the arresting officer, he had "tried to escape."

"I know I ought to be punished, but not for robbery." There was something moving about his rough sincerity. He won response from the few understanding strangers that trouble had brought into his life. His lawyer was impressed. The probation investigator showed interest and declared him "good probation material." A social worker who interviewed him visited the judge in private to express his judgment. A faint hope of being understood, of a "break," filtered into the boy's spirit, and he became cheerful.

The day of sentence arrived. All were expectant. Bill stood there, calmer than might have been ex-

pected. His slim and youthful body, six feet of it, would have made a better impression had it been better clothed. The arresting officer was put on the stand to recite again the events of the arrest. The judge fumbled through papers. He began to read cursorily, swinging in his chair, turning his back upon those who were interested.

Then for some reason scattered and casual details loomed important. Bill had moved toward the cash register . . . He had run . . . The officer had prepared to shoot . . . Bill had struggled to free himself after capture . . . He tried again in the detective room at the station house.

Suddenly the judge turned to him. "What have you got to say to this?"

With an effort that required a movement of his whole body, Bill struggled for courage to speak. It is a paralyzing experience to be called upon to speak in a court room with the judge thirty or forty feet away, attendants standing around, a curious crowd behind.

"Judge, I was drunk. I don't remember nothing about it." That was as much as Bill could get out.

"Did you notice any signs of intoxication, officer?"

"No, sir."

"Did you smell his breath?"

"No, sir."

"The officer says you did not show any evidence of intoxication. I certainly will take his testimony before yours. You are not mentally defective, nor are you



insane, but you are of the incorrigible type who does not hesitate to fly in the face of danger. You were in the custody of the police and you sought to make your escape again. You certainly were conscious that you did something for which punishment would be meted out. What were you doing out at one-thirty in the morning?"

"I was drinking beer and rolled down the subway and fell asleep; when I got off I don't know where I was."

Had anyone wanted to find out whether he had been drinking, or had anyone been interested in the boy's make-up, it would not have been difficult to gain some basis for intelligent decision. The opinions of those who had come to know the boy, whose judgments were based on at least some experience with the lad, were ignored.

"You are a dangerous, incorrigible little gangster, a nuisance to society."

With these remarks, the judge sentenced the boy to the reformatory.

At the word "reformatory" Bill's head sank slightly. He turned nervously and moved along the cage. Another victim of the law's majesty took his unenviable place.

### III

## Youth and Crime

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THIS study has to do primarily with the purposes of the criminal law and its procedures as they affect minors between the ages of 16 and 21. It makes no attempt at a comprehensive statistical analysis of the criminality of this age group. It is desirable, however, to furnish the reader with a certain amount of data, relating to the arrest, prosecution and final disposition of youthful offenders. The following statistical evidence of the crime problem of youth, though reduced to a minimum, will nevertheless throw light on the working of the system described in later chapters.

According to the annual report of the New York City Police Department for the year 1936, there were 826,887 persons of all ages arrested for violation of the penal code and municipal ordinances. About three-fourths of the arrests and summonses were for minor violations. A classification of arrests by age-groups of persons apprehended is as follows:

	<i>Number</i>	<i>Percent of Total</i>
Juveniles under 16	4,083	0.5
Minors, 16 to 21	32,800	4.0
Adults, 21 and over	790,004	95.5
Total	826,887	100.0

From these figures one would conclude that youthful offenders account for only a small part of the criminality that burdens the police, the courts and the public. But we find on closer examination that, although the young offenders contribute less than their proportionate share to the volume of minor violations, they commit more than their share of serious crimes. Arrests in 1936 for ten groupings of serious offenses of high frequency, shown by age groups, were as follows:

	<i>Total Arrests for Offense</i>	<i>16 to 21</i>	<i>Percent</i>	<i>Age Groupings 21 and Over</i>	<i>Percent</i>
Homicide	925 <sup>1</sup>	86	9.3	839	90.7
Felonious assault	3,339	272	8.1	3,067	91.9
Rape	803	236	29.4	567	70.6
Robbery	1,792	442	24.7	1,350	75.3
Burglary	2,273	954	42.0	1,319	58.0
Larceny from the high- way, vehicles, etc.	2,252	883	39.2	1,369	60.8
Larceny from the person by stealth	780	104	13.3	676	86.7
Sneak thievery from buildings	1,638	366	22.3	1,272	77.7
Frauds, swindles, etc.	3,301	290	8.8	3,011	91.2
Carrying firearms, weap- ons, burglar's tools	884	160	18.1	724	81.9

The above tabulation discloses that young offenders between 16 and 21 account for an astonishingly high percentage of the arrests for crimes against property. Youth is more frequently involved in the acquisitive ventures of burglary, larceny, and robbery, or crimes which require daring and boldness, rather than cun-

<sup>1</sup> In addition two juveniles below 16 were arrested for homicide.

ning, for their execution. A comparison of the arrests of minors, young adults, and older adults for the principal offenses against property rights, is shown as follows:

<i>Age Group</i>	<i>Robbery</i>		<i>Burglary</i>		<i>Larceny from Highways, Vehicles, etc.</i>	
	<i>Percent</i>		<i>Percent</i>		<i>Percent</i>	
16 to 20	442	24.7	954	42.0	883	39.2
21 to 25	469	26.2	419	18.4	440	19.5
26 and over	881	49.1	900	39.6	929	41.3
All ages	1,792	100.0	2,273	100.0	2,252	100.0

The total of 6,317 persons arrested for the above three crimes includes 135 female offenders of all ages. These are not shown separately by age grouping in the police department's tabulations. Whatever the exact number of girls coming within the 16 to 20-year group, it is so small in proportion to the number of boys that, for our purpose, it may be disregarded.

The New York State Crime Commission in its final report to the legislature presented a statistical analysis of what happened after arrest in the cases of 16 to 21-year-old offenders, charged in New York City with the commission of felonies and serious misdemeanors.<sup>2</sup> The criminal case-histories of approximately four thousand youths, charged in one year, were followed through arrest, prosecution and final court disposition.

The number arrested and arraigned before magistrates was 3,963.

Ninety percent of these—3,555—were held in city prison or county jail awaiting arraignment.

<sup>2</sup> Report of the Crime Commission of the State of New York, 1931, Table 27, pages 172 and 173.

Slightly more than one-half of these—2,165—were bound over for Grand Jury hearing, some being discharged by the Grand Jury and others held for trial.

The remaining 1,798 were either released by the magistrates or proceeded against in another court on reduced charges and placed on probation.

When the grist was finally ground out in all courts, the following result was obtained:

Found innocent	2,261
Found guilty—sentence suspended or probation	695
Committed to correctional institutions	1,007
Total	<hr/> 3,963

Thus we see that eventually only one in four was thought deserving of imprisonment. But the grim fact remains that the criminal justice procedure required the ordinary jailing of nine out of ten to await judicial determination of their cases. The Crime Commission in commenting on the “prodigiously large” number of accused persons who were discharged as innocent observed that “either a very large number of innocent boys and girls have been subjected to an unpleasant and hardening ordeal, or a very large number of guilty young offenders have acquired a new and contemptuous attitude toward the law which allowed them to escape punishment. And, in this connection, it is important to remember that of the 3,963, there were 2,765 first offenders, who never before had been prisoners in an adult court of law. In the meantime, we are in the uncomfortable

dilemma of knowing that no matter what the true answer is to our question, somewhere in our system of justice there has been gigantic blundering, and toying with the lives of youths.”<sup>3</sup>

It is our conviction that the blundering comes about as the result of a conflict between the vengeful, punitive aims of the criminal law itself and the more constructive aims of those who have to administer it. On the one side is the penal code rooted in the theory of awarding punishment and applicable alike to all and sundry whose acts fall within its categories, whether adolescent youths or adults; on the other side are judges, district attorneys, and jurors who notice many cases where reformation of a young offender, without imprisonment, seems possible. Some of the offenders are let off because any other course under the existing penal code would call for more punishment than appears to be desirable. Administrators are in some instances, perhaps in many, defeating the ends of punitive justice in order to be just. The law is exclusively concerned with seeing that the punishment fits the offense, while its better administrators are more interested in seeing that the punishment fits the offender. Thus we have a system of justice wherein there is far too much imprisonment as a prelude to determining whether or not there may be imposed less harsh punishment than that called for in the penal code.

<sup>3</sup> Report of the Crime Commission of the State of New York, 1931, page 173.

## *IV*

### Arrest and Arraignment

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WHAT do these youthful offenders undergo? What does arrest, arraignment, detention, examination, trial, sentencing, mean to them? To what sort of places are they sent if formally punished? These questions we shall attempt to answer in this and the following chapters.

#### THE ARREST

In New York a person who commits an act, or omission, which is forbidden by law, is liable to arrest. Arrest may be made by service of a warrant signed by a magistrate or, under certain conditions, without a warrant.

There are four conditions upon which an arrest can be made without a warrant:

(1) If a crime is committed or attempted in the presence of a peace officer, the arrest of the offender by the officer is, in theory, mandatory. In this action the arresting officer becomes the complainant.

(2) Arrest can be made by a private person for a crime committed or attempted in his presence or for

a felony not committed in his presence. He must deliver the person to a peace officer or magistrate as soon as possible.<sup>1</sup>

(3) Arrest can be made by a police officer or other person when a felony has been or is alleged to have been committed and there is "reasonable cause" to believe the accused has committed it. At night, arrest can be made upon suspicion without formal complaint or even allegation, viz., a person sitting in a car in an isolated place or in a deserted neighborhood, a person with a suit case or bundle, a person loitering in a doorway, etc.

(4) Arrest can be made upon the verbal order of any magistrate who properly identifies himself.<sup>2</sup> In this case, the magistrate may be the complainant and may sit in judgment on the case. "In arresting a person without a warrant such person must be informed of the authority of the officer and the cause of the arrest, except when the person arrested is actually committing a crime, or is pursued immediately after an escape."<sup>3</sup>

Although an arrest is mandatory upon a police officer who witnesses a crime or to whom a definite complaint accusing a person is made, in practice discretion and "common sense" are used in settling disputes and in dealing with the less serious situations. Such discretion is commended by most police officials. The degree to which a policeman on his beat or as desk officer at the station house can act as judge and

<sup>1</sup> Code of Crime Pro., Sec. 183-185

<sup>2</sup> Rules and Reg. 359, New York City Police Department.

<sup>3</sup> *Ibid.* 361, New York City Police Department.



arbiter, when viewed socially, is an important and significant area of police power.

Upon making an arrest the arresting officer leaves his post and proceeds with the prisoner to the station house of the precinct in which the arrest is made "for search and record." A person arrested on a warrant is taken directly to court when it is in session, instead of to a station house. In this case, the arresting officer "immediately after arraignment of the prisoner in court, must transmit to the desk officer of the precinct in which the arrest was made, the particulars regarding such arrest for entry in the Arrest Record."

The means of conducting the prisoner from the place of arrest to the station house is left to the discretion of the arresting officer. He may telephone the station house and inform the desk officer of the arrest and request a patrol wagon, or if the station house is reasonably near he may cause the prisoner to walk there, or he may use a police car if one was used in the arrest. In any case, the prisoner must be taken immediately to the station house of the precinct in which the arrest is made.

#### CHARGING OF CRIMES

The crime to be charged against a prisoner at the time of booking is decided by the desk officer on the basis of the facts stated by the complainant. The problem involved is to fit the facts into one or more of the categories of crime defined in the Penal Code.

This may result in several crimes being discovered in the one general act, and when they can be discerned they are meticulously listed.

If the prisoner is detained on a minor charge, i.e., the violation of a city ordinance and all but certain misdemeanors, he is booked, searched and lodged in a cell at the station house until he can be taken to the magistrate's court, unless, meanwhile, bail has been secured. This may be a matter of minutes or hours depending upon transportation facilities. Prisoners booked between 9 A.M. and 11 A.M. must be taken immediately to a magistrate's court. If arrested at other hours they may be detained until hearings are likely. To prevent crowding at Night Court the precincts are notified as to what hours prisoners for that court will be transported.

If the person arrested is charged with felony or thievery or with one of six misdemeanors, specified in Section 552 of the New York Code of Criminal Procedure,<sup>4</sup> he is taken to the precinct detective office for purposes of identification.

This may include questioning by detectives and

<sup>4</sup> a. Illegally using, carrying or possessing a pistol or other dangerous weapon;

c. Unlawful entry of a building;

b. Making or possessing burglars' instruments;

d. Aiding escape from prison;

e. Jostling against a person or unnecessarily crowding him or placing a hand in the proximity of a person's pocket, pocket-book, or handbag;

f. Unlawfully possessing or distributing habit forming narcotic drugs; or if he is a known criminal, charged with a misdemeanor.

other police officers, questioning by the district attorney or his assistant, identification by witnesses, or other procedures deemed useful in establishing the commission of a crime by the prisoner or others. In addition to the regular booking, he must be fingerprinted and photographed. Fingerprints can be taken at any station house, but facilities for photographing exist only at the Bureau of Identification at Police Headquarters. Thus after questioning at the detective office, a prisoner charged with a felony or any of the six designated misdemeanors is taken to headquarters before appearance in magistrate's court. If the process of identification is completed in time to reach the magistrate's court in the district in which the alleged crime was committed the prisoner is taken there for hearing. If it is too late to secure a convenient hearing he is detained at headquarters until the following morning; if arrested by a detective, or if arrested by an officer other than a detective, he is taken by the arresting officer to a detention prison under the jurisdiction of the police department where he remains until the next morning. Sometimes before 8 A.M. he is returned to headquarters for the daily line-up. The arresting officer has to accompany the prisoner to and from headquarters, be present at the line-up and conduct the prisoner to the magistrate's court. Police responsibility is uninterrupted until arraignment in magistrate's court. No prisoner charged with a felony or one of the designated misdemeanors can be arraigned in Night Court.

## EXAMINATION OF PRISONERS

The police examination may include anything from polite, considerate questioning for the establishment of certain facts to severe and brutal beatings to elicit admissions and to compel the signing of so-called confessions. A prisoner may not only be questioned about the particular crime charged, but about any number of other crimes that the police want to solve. One of the purposes of taking a prisoner to the detective bureau is to check up on crimes of a similar nature, or carried out with a particular technique, or perpetrated in the same neighborhood, and the prisoner is so much evidential material for otherwise baffled police. Persons charged with no crime but arrested on suspicion or by mistaken identity may be subjected to this process of examination and to all the dangers, effects and indignities of it.

An impersonal, cool, objective efficiency, content with the apprehension of offenders, is not as yet the professional manner of the detective force. If information is desired but not readily given, or evidence is lacking for "a complete case," force may bring results. And there is no sportmanship in the manner of exerting it. Rubber hose, blackjacks, and fists may be used freely to extort answers and "confessions." The accounts furnished by prisoners are given with too much conviction and feeling and from too completely independent sources to harbor any doubt

about the fact of police beatings.<sup>5</sup> They take place at the time and place of arrest and at station houses. The latter are the more deliberate and brutal. A beating at the time of arrest has the presumption of a possible necessity or of a justifiable nervousness and fear on the policeman's part. But a beating at the station house may be challenged for any excuse. The fact that having occurred, the men who do it or witness it enter into collusion to deny it baldly or explain the results away by saying the victim "fell down the stairs" or "the ceiling fell on him" adds a sting of bitterness that engenders hatred and a desire for personal retaliation, not to mention a feeling of rebellion against all authority.

#### THE LINE-UP

Prisoners charged with the commission of a felony or a serious misdemeanor must be taken to police headquarters, prior to their appearance before a magistrate. This may necessitate several transfers, first from the station house to a receiving detention prison, to headquarters, back to receiving prison and to magistrate's court. These movements may take place at any time of day or night in police vans, most of which mercifully protect their occupants from public gaze, but which mingle all types and ages of

<sup>5</sup> Of the 1,554 cases of indigent prisoners handled by the Voluntary Defenders Committee of the Legal Aid Society in 1935, including all ages, sexes, offenses, 405 claimed to have been beaten by the police. In 1936, of the 1,606 cases handled 313 claimed like treatment.

persons. All prisoners requiring this identification, except such as happen to be arrested and who complete both police examination and identification before 11 A.M., are placed in the line-up conducted every morning, except Sundays, at police headquarters. Here, standing on a platform, in the glare of lights, before scores of detectives, police officials and visitors, they are questioned again, their records, if they have any, read out, their faces and figures viewed in various positions, and the procession moved on in as rapid a succession as these matters are deemed necessary to require. Several prisoners are stationed along the side of the hall awaiting their turn, listening the while to the questioning of others, and anticipating their own ordeal. The purpose of the line-up is to let the members of the detective force become familiar with persons arrested for serious offenses.

#### ARRAIGNMENT BEFORE A MAGISTRATE

A prisoner, whether accused of a felony or the violation of a corporation ordinance, arrives sooner or later at the magistrate's court in the district in which the alleged offense was committed. He may have been to half a dozen different places since his arrest; he may have been beaten, cajoled, threatened, fingerprinted, photographed; he may have been in a hospital recovering from injuries received in the commission of a crime or in the process of arrest; if accused of violating an ordinance or of a minor offense, he may have secured bail at the police station;

he may have arrived in answer to a summons or warrant. Whatever the route he joins a motley crew. If his offense is a serious one he finds himself behind bars in a "pen" with others. Theoretically the arresting officer accompanies him through each stage of his Odyssey, but frequently the actual task of transporting him is left to another officer, who may take charge of the prisoners of several arresting officers.

Once the prisoners are "signed in" at the detention pen in the court building, the police officers go to the complaint room to make formal charges. The complaints, when sworn to, are taken by the arresting officers to the court docket clerk where they are numbered and docketed and next delivered by the clerk to the "bridge man" who calls them out, in order, for hearing before the magistrate. The arresting officer "signs out" the prisoner and has to remain with him until disposition of the case by the magistrate. Magistrates, from the point of view of arresting officers awaiting their prisoners' turn on the docket, are unpredictable and variable in the extreme. Some magistrates have executive capacity and under their businesslike management the court runs smoothly. The wait is short because the issues are decided promptly and without declamation. Others are dilatory and much given to lecturing the prisoner or the policeman, or both. Police officials, together with their prisoners, witnesses, lawyers, friends, court attendants and clerks, wait patiently, putting aside all business, pleasure, plans and convenience—waiting.

In respect to serious offenses, it is the duty of the magistrate to determine, from the evidence presented to him, whether a crime has been committed and whether there is sufficient cause to believe the defendant guilty of it. The prisoner is either released, held for further examination, admitted to bail, or remanded to jail for the action of another court or the Grand Jury. The arresting officer continues with the case through the magistrate's court, chiefly as a witness or to give corroborative evidence of actions leading to arrest. If the case is not dismissed by the magistrate, or if the prisoner cannot secure bail on the spot, he is conducted by the arresting officer to one of the holding prisons or detention pens under the jurisdiction of the Department of Correction, carrying with him the order of commitment signed by the magistrate. Upon the delivery of a prisoner and properly certified commitment papers, the Department of Correction assumes responsibility for his custody. If the prisoner is held for further examination in a magistrate's court, the arresting officer must call for him, and, on the authority of a "recall slip" signed by a magistrate, conduct him again to the court. Police responsibility ceases when some definite action is taken in the case by a magistrate.

Magistrates' courts hold an important place in the administration of the law. They are the bulwark of citizen rights against tyranny and oppression, designed as guardians of things laid down in the constitutional charters of democracy. Thus a person arrested



must be taken before a magistrate as soon as possible and the City of New York makes provision for an immediate public review of arrest or accusation from 9 A.M. until past midnight, seven days a week, excepting persons charged with felony who must be brought before a magistrate within twenty-four hours after arrest unless incapacitated. There is no official in the democratic arrangements of American government, local or national, who can deprive an individual, whether a citizen or not, of his liberty for more than a day without the consent of a duly appointed magistrate. The police, when lacking sufficient evidence to justify holding an individual on a specific charge, can ask for "a short affidavit" privilege of having persons suspected of crime held for forty-eight hours, but there is a limit to such action and reason must be sufficient to satisfy the magistrate. Some magistrates will not cooperate with the police in thus holding persons. They require them to have enough reason for a *prima facie* case or else not make the arrest. There is often friction between the police and the magistrates on this point, the latter accusing the former of depriving persons of their liberty without sufficient cause.

The high purpose of these courts to protect constitutional rights is often obscured by the way they are conducted and by the character and manner of the individuals in charge of them. There is every tragedy of human frailty to be found in these courts, a mingling of every type and condition of person, of every offense in the categories of crime. It is one of the out-

standing pities of the situation as a whole that this concentration of human failure and need should be faced almost solely with a measuring rod of law and be dealt with in terms of its findings. There is probably no point of challenge so great or so overwhelming in all the imaginable ones of a city like New York as these "inferior" courts. Recently a noticeable improvement in quality of administration has come about in the magistrates' courts of New York City. Any improvement is, of course, to be warmly welcomed. The goal, however, should be elevation of the magistrate's bench to a position where it would command as much respect and confidence as is reposed in any other tribunal in the state. This court should be staffed with personnel of the very highest capacity, integrity and wisdom.

## V

### Detention

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Most prisoners held in Manhattan for the Grand Jury or for the Courts of Special and General Sessions, are sent to the Tombs. Persons may also be held there for further examination in a magistrate's court, particularly the First District Court now known as the Felony Court. In addition, violators of probation and parole are confined there. Persons sentenced to the Workhouse, the City Penitentiary, the New York State Vocational Institution, the Institution for Criminal Defectives, and State Prisons, are transferred to these institutions the day after sentence. Those sentenced to the New York City Reformatory are held until the first Wednesday after the first Monday following sentence, and those sentenced to the New York State Reformatory at Elmira are held usually until the Saturday or Monday following sentence. Some persons sentenced to the Workhouse from the First District Magistrate's Court for terms not exceeding ten days are kept at the Tombs to save the inconvenience and expense of transportation. Otherwise the Tombs is exclusively a place of detention for persons awaiting trial. No program of education, recreation, or social rehabilitation is attempted because, theoretically,

persons in it are there only for short periods; those not yet sentenced have forfeited no rights, and are therefore not subject to punishment or "correctional" treatment.

The following description of conditions in the Tombs is meant as an illustration of the legal system of detention. It is not meant to reflect upon its administration, which at the time of this study (1934-37) is probably the best it has ever been.

#### ARRIVAL

Arrival at the Tombs is usually by van. These vans are completely enclosed steel vehicles with small protected slits near the top for ventilation, and doubly locked. They are driven into the prison yard and after the closing and locking of the two sets of gates, the van doors are opened, and the prisoners, who are usually already handcuffed in pairs, are let out and marched through the yard to the receiving desk on the second floor of the prison. "Time prisoners" assigned from the City Penitentiary to maintenance tasks, may be lounging around the yard, prisoners from the two annexes may be going back and forth under escort, and some of those in the annexes can see the incoming groups. The fact of being prisoners and the shrinking sense of helplessness that goes with the fact, the disadvantage and indignity of being gazed at even by other prisoners, the ready necessity of getting used to their new roles in the presence of others—keepers and prisoners who are obviously used to it—

cause them to slink along, sometimes dumbly, sometimes jauntily.

On the second floor of the prison, they are herded into a narrow space that is little more than a hallway. There may be drunken vagrants in the group, dirty, broken wrecks of humanity taken in on periodic clean-ups of public places. There are usually a few narcotic addicts, some of them in need of "a shot." There may be boys of various ages, from sixteen up. Not infrequently there is a boy younger still who, in his ignorance, imagined it better to run his age up a year or two. There may be some in the group who are well dressed, hard, prosperous criminals, inadvertently tripped into arrest, and inoffensive youths who had "a few beers" too many and, in consequence, involved themselves seriously or otherwise with the law. There are a few of gentler mien, completely miserable and out of place in so motley a crowd. Prisoners of every nationality, color and degree of deprivation are represented in the course of a day and frequently in each "load."

Handcuffs are removed, the count is taken, the commitment papers delivered and the van man goes off with his clanging handful of steel. A keeper takes charge. Each prisoner is searched. The articles confiscated are put in envelopes and sealed against his release. In the case of drug addicts, the search may be very thorough, including seams of shirts and other clothing and requiring undressing. If there is doubt the doctor may be called in to pass judgment or to

temporarily relieve those who have gone too long without their quota. There is little privacy. A boy subjected to all of this may in a few minutes learn more than he ever knew before.

Loads of new prisoners may come in at any time of day. In the same space in which they must be kept, may also be groups of prisoners just back from court, or boys awaiting to be interviewed by the Parole Commissioner before being sent to the New York City Reformatory. On days when the police have raided parks after a wave of vandalism or robberies, the place is jammed and the keepers are over-worked. As often as not there is little attempt on their part to hide the fact. As a rule, the new prisoners are assigned to their places in the prison with reasonable promptness. Except when "pedigrees" have not been taken elsewhere and the necessary facts for record jotted on the back of the commitment papers there is no delay. Otherwise the prisoner has to wait at the desk and answer in order the rapid-fire questions, asked without regard to who may be standing about, concerning his name, address, age, color, religion, occupation, use of drugs, liquor, tobacco, etc., all of which may be asked in a loud voice and without even a glance in his direction. If he does not answer satisfactorily he may be sworn at; when he is through he may be told gruffly, "get over there," and finds himself in a corner waiting for the next order. If the pressure of work is light and the keepers are in good humor, the whole performance may be carried through lightly and even jovially.

There may be jokes about the accommodations of the "hotel" and questions about the service required by the "guests." Some of this may fit the mood of the prisoners exactly, and be comforting evidence of friendliness on the part of men with unpleasant but necessary jobs. The prison keeper rarely bears the burden of the system in the prisoner's eyes. He is a cog in it, accepted with much more reasonableness and grace than the police, district attorney, or judge. But the feelings of prison keepers are not ever far from the surface and there is little restraint about expressing them bluntly, often crudely. Prisoners, being prisoners, have no recourse but to accept whatever is said or done to them without retort or complaint.

#### ASSIGNMENT TO CELLS

Assignments to cells are made on the basis of age, charge, health, and record, limited in each case always by the space available in the prison. Boys under twenty-one who are first offenders, in the sense of not having "done time," are placed in the North Annex, and those who have had institutional experience are placed in the South Annex. This question is put to a boy in a variety of ways and not carefully inquired into, so that frequently boys are sent to the South Annex with boys who have been in the Workhouse, Penitentiary, New York City Reformatory and Elmira, who themselves have been in institutions merely as dependents or juvenile delinquents. For

example, a sixteen-year-old boy, youthful in appearance and inexperienced, may be found in the South Annex because four years before he was in an orphanage. This, however, is not usual.

All homicide cases, including boys, are placed on the second tier of the main building, although occasionally boys under this charge may be sent to the North or South Annex to separate them from co-defendants or others who may have threatened them. Agitated prisoners, who either attempt or are suspected of planning to attempt suicide, are usually placed on the first tier in cells in sight of the receiving desk where keepers are nearly always on hand. If the situation is too serious the prisoner is sent to Bellevue Hospital for observation.

Prisoners charged with misdemeanors are usually assigned to the fifth tier, venereal cases, if known—there is no routine examination—are sent to the eighth tier, and drug addicts to a specially segregated part of the South Annex. Adult prisoners with felony charges other than homicide, are scattered throughout the main building, and all “time prisoners,” i.e. those sentenced to the New York City Penitentiary and assigned to the Tombs for its service and maintenance, are housed in a dormitory on the top floor of the prison. A slip of paper is given each new prisoner at the desk containing his name, charge, and tier assignment. The keeper in charge of the tier to which a prisoner is sent takes the slip, enters the information in a book for the purpose, assigns him a cell, gives



him a quota of blankets, tin bowls and spoon, and either takes him to the cell and locks him in or has "a runner" do it.

In the North Annex, in which is concentrated the first offender group of boys, there are five tiers. The cells on the ground floor are assigned to "time prisoners" from the Penitentiary who work at the Women's Detention Prison and are transported back and forth each day. The Women's Prison was designed and built without provision for persons who might maintain it, and for administrative convenience the men who have this duty are housed in the same building with the boys. They have more freedom than the boys and can move about in the evenings, play cards, and otherwise make the best of their limited space. Two of the men are used as runners and cleaners in the Annex itself. There is no special selective principle used in picking these men so far as character, association or ability are concerned. They are often crude and their influence questionable. There is evidence of their frequently imposing upon boys, taking money or belongings to secure them lawyers, charging to move them to another cell or to arrange for them to be with another boy, giving them misinformation and mulcting whatever meagre funds a timid and unsophisticated youngster may have .

A new boy finds himself conducted to the door of the Annex and let in. He presents his green slip and stands about until the keeper out of natural curiosity asks him about his crime, with no special regard to

who else may be listening, or with any delicacy of feeling regarding the boy's sensitiveness or particular personality. His account may be received without comment. On the other hand, the boy's manner, the keeper's mood, the circumstances of the moment may give to the occasion a humorous setting or create a flare of resistance and antagonism that will be reacted to immediately. If it was a robbery and an awkward failure, or a boldly naive, crudely bungled burglary, or a fight that resulted in a tell-tale wound, or the size and the age of the boy seem all out of proportion to the charge, or if he is nervous, weepy, swaggery, or proud, a nickname may be attached to him that will last throughout his stay. If it is a technical charge of rape or other sex charge, some of the facts, such as the age of the girl, her condition, the boy's plan of marriage, the attitude of his real girl, etc., are brought out, accompanied by banter or mild ostracism of the boy. To be humorously referred to by a lurid nickname may set a boy up or make him cringe behind a forced smile, but he is helpless about its application. An inevitable like or dislike obtains between keeper and prisoner, especially where boys are concerned. It arises spontaneously and intuitively. To be liked may give a youth a decided advantage; to be disliked and made to feel it may add immeasurably to the general misery of his incarceration.

Assignment to cells is on no particular principle, except that colored boys are usually put on the top tiers and the boys of the same nationality and lan-

guage are likely to be put together, especially if one or the other of them does not speak English. Boys who are friends and held on the same charge are as often as not placed together, but equally often separated. There is a phantom rule of the State Prison Commission that prisoners should be housed singly whenever possible and this regulation furnishes sufficient excuse for putting boys in cells alone when it is the pleasure of the keeper to do so. However, depending on the mood or notion of the moment, boys may be put together when cells are left empty by so doing. No rule is consistently adhered to in practice. In putting boys together little thought is given to the possible influence of one boy on another. Not enough knowledge of them exists to estimate the matter properly. Sometimes boys are put with one another who bring out the worst in each other. Language, thought, general attitude and standards sink almost visibly. In other instances, associations are made by cell assignment that are consoling, stimulating, and generally constructive. But the results either way are those of mere averages and chance, and the process is based neither on knowledge or sensitive skill. The advantages and disadvantages of being alone, or the meaning of being in a cell at all, are not clear at the time. The boy is a mere neophyte in process of initiation into the crude realities of prison experience.

## SETTLING IN

Out of a cell on the ground floor, used for supply purposes, blankets are produced, together with two tin bowls, a cup and a spoon. These are loaded into the boy's arms, and he is directed or led to the cell assigned. It is a miserable and forlorn kind of ceremony. The boy plods along dumbly, doing what of necessity he must, but dejectedly and with no little embarrassment. To a person of sensitive pride it is one of the deeply humiliating moments of his life. The whole process from arrest on is humiliating, but this temporary stop in the slow movement of the law is one of the most awkward. He passes the cells from which other boys look out, almost without noticing either cells or occupants. The keeper opens the one, chosen for the boy and locks it behind him. He is used to it and goes on to his never-ending duties unconcerned. Inside the boy looks around and deposits his load of blankets and bowls on an unmattressed bunk. There is a wash basin about twelve inches across with a cold water faucet; in one corner is an open, unseated toilet; and along one side of the wall a dingy oblong bench which must serve for table, chair, footrest and serving stool. If there is a boy already in the cell he takes the unoccupied bunk, whether upper or lower. More than likely there is no formal greeting but a welcome, however inarticulate, if the other fellow has been there long alone. A cell-mate makes settling in an easier task, easier certainly on the feel-

ings. To struggle through alone in so desolate a place as a Tombs cell would be trial enough for a mature and self-contained adult. For a youth, emotionally frustrated, who frequently is convinced of his innocence, or who still feels the bruises of a resented beating, or the weariness of sleepless hours due to arrest and transportation, and the sheer strain which they imply, it is a trying ordeal. The reactions to it are various. Some arrange their blankets and stretch out in deep and welcome sleep, unconscious either of the blankets' roughness or the fact that they may have last been used by a boy who bathed none too often or who may have had a venereal infection. Others sit, disconsolately, or pace up and down, with sleep the last thing in their list of desires. A few have been found on their knees, their faces buried in their blankets, oblivious of who or what might pass outside. Most screen their feelings behind a stoical indifference or a jaunty light-hearted matter-of-factness.

But in no case is it difficult to perceive the shock that tears them inwardly. The most hardened and the most guilty show it by suspicion, resistance, sullen rejection of all efforts to help. The softer and gentler show it by tears, the more poised, but equally disturbed, by a barrage of questions. Some are concerned most about communicating with their families and others about keeping everything from their families. Some, who have known only want and poverty, build up vivid hopes of bail to be provided they know not how. The very misery of their lot makes the reality

the more necessary, and therefore the more likely, even if impossible.

The failure of whoever is responsible, society or the legal system itself, to realize and utilize the effect on youth of the first few hours and days of confinement misses one of the outstanding opportunities in the operation of that system. The moods, the resolves, the insights of those days skillfully dealt with, boy by boy, and person by person, probably would do more towards changing the direction of the lives involved than all the elaborate devices of the Penal Law and Code of Criminal Procedure combined. The passing of those first days with no arrangements in the system—no one in authority—to perceive the struggle with understanding, or to believe enough in the boy, or man, who suffers it to bring the idea of law and society to within meaningful grasp is one of the real tragedies of the system. The person passes from a level of possible and permanent help to one of indifference, to an acceptance of a cold, machine-like handling that he feels has no intention of understanding him, believing in him, trusting him, or helping him.

It must be remembered, wrote Sir James Stephens thirty-five years ago and referring to the long history of English Law, "that most persons accused of crime are poor, stupid and helpless." Most first offenders, certainly the vast majority of boys when first arrested, have no clear idea of either the law or society, no conscious sense of self in relation to a whole, and

therefore no realization of how crushing the weight of society can be on the individual who, wittingly or unwittingly, defies it. Strangely enough, society in its overpowering might acts toward him as a combatant. It strikes back at boys who, it assumes, have struck at it intent upon its destruction, but who in fact have no proper conception of society at all, and are struggling instead in worlds of their own, worlds chiefly of conflict and deprivation. These youths need help. Crime, to a society secure and willing to see it, would be a sign of need, a call for help, an announcement of inadequacy. This is never so clear as when seen in the lives of boys, called by the names of their crimes—robbers, burglars, thieves—in the first days of their helpless movements in the toils of the punitive system.

#### MEALS

Meal time comes. With it comes another reason for humiliation. At any time of his stay it is a source of embarrassment to a prisoner for any one to be around when he is fed, but particularly at first. If it is a meat day, a time prisoner-runner passes by with a stack of tin plates each containing a portion of meat. It is placed on the floor, outside the cell. It has been brought there in stacks in the arms of men from the kitchens in another building. Soon another man appears with a big container of potatoes and deposits one or more with his fingers on the plate. Another follows with a vegetable, and another, possibly, with gravy or a pudding. If it is stew day or the dreaded

fish on Friday when only bowls are required, a keeper or runner has to precede the servers and open the doors, to permit the bowls being placed on the walkway floor to be filled and taken in again. Bread has previously been brought around and handed piece by piece through the grating. There are no facilities for insuring cleanliness of hands for the several handlings of it. It is often left wedged between the cell door bars and sometimes dropped on the floor in the process. Inside it can only be placed on the bunk or bench. There are rats in the place and not infrequently vermin have to suffer a campaign of extermination. In some cells there is a horizontal slit near the floor through which the food, deposited on the floor outside, can be passed without the necessity of unlocking and locking the door, but in all cases, it may be said, food is served to prisoners on the floor.

It is an animal-like way of feeding. A spoon is the only implement allowed. Spoon and bowls must be washed out in cold water in the cell and dried, if at all, with the towel used for another purpose. Between meals they are kept on bench, bed or floor. The toilet is the outlet for all scraps and sometimes for the whole meal, if in disgust or anger it is hurled in that direction. No condiments are provided, no butter and no sugar. Some desserts are sweetened and jam is served several times a week. Food must be taken without salt, and coffee and tea must be drunk without sugar, unless it is bought privately from the commissary. Milk, fruits, candy, tobacco, cakes, pies, sand-



wiches, can be bought, usually at prices slightly above those current outside, and certain specialties can be ordered from the commissary kitchen. The proceeds of the commissary constitute funds for clothing and other services to prisoners in, or at the point of release from, the penitentiary.

But for all these special foods money must be had. The vast majority of boys and a great many men have no money, not even enough for postage stamps or cigarettes. Those who get money from outside are usually generous with it. Such a setting creates almost spontaneously a genuine kind of free masonry. However, if the person with money, even small amounts, is naive or weak or gullible he loses it by force or theft. Attack is comparatively safe since in such circumstances there is not likely to be any "squealing." One learns to endure injustice, whether official or unofficial, along with humiliation.

#### FREE PERIODS

Free time is a lifeless, but nonetheless welcome thing. It comes twice a day for forty-five minutes in the morning and an hour and fifteen minutes at two in the afternoon. Twenty-two hours a day in a cell, whether with a mate or alone, is an exquisite kind of torture for a boy, but it is regular routine in the Tombs. "I'll go crazy in this place with nobody to talk to, nothing to read, nothing to do." Every boy who goes through the experience, even for a day, says something of this kind. He doesn't go crazy. He

learns to endure. Fortunately he never gets used to it; he symbolizes his longing for the outside by time-counting devices. There is scarcely a cell or a prisoner that has not a self-made calendar, meticulously and almost ceremonially kept. Boys, who before arrest have little appreciation of the passing of time, talk in terms of the exact number of days they have been in. There is little generalizing and only occasional use of round numbers. It is twenty-nine days, two weeks tomorrow, a hundred and four days, as the case may be. He knows the day of the week and the date in the month that he was arrested and the same for his coming to the Tombs. He knows, at least by referring to his calendar drawn in pencil on the wall, just what day he was in court, how many times he went before "reaching," and when he is to be sentenced. Time is almost personified, and freedom is rendered a confused, inarticulate but deeply felt worship, vague as it has been in their lives and filled with whatever misery or handicap.

On week days when the cells are unlocked their occupants may go up and down the stairs, for it is some time during the afternoon free period that money and packages, left in the prison office or sent through the mail, are distributed. A clerk, bustling with haste, comes in, with strong box and receipt book in hand, and takes a stand by a small desk on the ground floor. In the loudest voice at his command, he calls out in rapid succession the names of the persons for whom he has something. Most of the inmates

crowd around; all do in fact, except those who have no expectation whatever of receiving anything, although the most abandoned is likely to nourish a hope that by some miracle of chance he has been thought of by somebody. The receipt book is signed and the money passed over in full sight of everyone. There is no chance for private business in the Tombs. On Saturdays, Sundays and holidays, when there is no distribution of money and only one keeper on duty in the Annex, boys cannot leave the tier on which their cells are located. This means a narrow walkway, too narrow indeed for movement. The free period therefore consists in leaning over the rail and chatting with others. It is possible for groups or cliques to gather in cells or in the wash room on each tier out of sight of the keeper who cannot be on all five tiers at once. A boy who cannot defend himself against others, can be relieved of anything he has that others want, or have any indignity done to his person. There is apparently little of this in practice, but it is plainly possible and is done more often than there is any way of knowing.

At no time is there any real exercise or play. There is no going out into the prison yard for fresh air, no calisthenics, no boxing, no games, no play material. Some boys have cards in their cells and play whatever games are possible for one or two persons. Ingenious fellows make checker boards and paper men and one unusually resourceful lad made a whole set of chess. Noise is taboo and therefore singing is forbidden.

Those who break forth into song or shout to friends on other tiers are called down in no uncertain terms, or taken to "the cooler" in the South Annex, with no release even in the free periods. Twenty-four hours a day in a cell soon make one aware of one's voice and its use. As it is, to be in from three-fifteen in the afternoon until eight the next morning and from eight forty-five to two in the afternoon is long enough. On weekends and holidays supper is served at three-thirty or four. On these days, therefore, there is not even the interruption for supper in the monotony of things and the stomach as well as the mind seeks attention.

#### VISITS

The expectation of a visit is, in circumstances like these, a thing to live on. But even it is doomed to disappointment. Some boys want visits most eagerly and worry themselves sick when they are not forthcoming. Others, embarrassed by the fact of their arrest, would rather suffer anything than face their families. It is a lesson in the state of human relationships to note the range of reactions in this largely inarticulate group. At one extreme is a fierce, animal-like attachment of parents and children that may be rough and abusive but is genuine at its core, and at the other a colorless lack of feeling altogether that estimates a child, a home, a parent, entirely in terms of what can be got from it. The family ties of many who come to the Tombs are on a crude, unperceiving level that causes the boy to be all but ignored. His

family may visit him once in a while or not at all, displaying no imagination about his lot. The boy may be sensitive and suffer much by reason of it or he may be equally indifferent and expecting nothing, miss nothing by being ignored.

The insensitiveness of some families and relatives is not towards the boy but towards what he has done. They absolve him of all blame or stigma and rise in haste to his defense, angry that he has even been accused of wrong doing, without thought of the effect on the boy of their absolution. They come to comfort and console. They make all possible sacrifices to raise bail and secure legal service, without considering the economic realities of the situation. Visits mean assurance and are taken for granted. There is no embarrassment one way or the other. Having completely identified themselves with one another, objective standards are obliterated.

Some prisoners are strangers in the city, or worse still, strangers in the world, who expect no one and accept their lonely lot chiefly because they must. They may do this with grace, or otherwise, making themselves miserable over the lack of anyone who cares.

There are a goodly number for whom meeting a parent or other relative for the first time, or the tenth, on the basis of the wrong doing of the one, is a painful experience. It is an embarrassing and tearful affair endured because love and loyalty demand it. Under the right circumstances it might have lasting and salutary effects, but under the circumstances that

actually exist it rends feelings to shreds and frustrates both hope and good intention.

Whatever a boy's family ties and whatever his circumstances, the little slip of rough paper that announces a visit is a welcome word. He grabs it, reaches for his coat and his comb, if he has one, and rushes out of his cell. Downstairs he waits for the others who have "visits." When they assemble, a keeper takes them through the yard to the visiting room in the main building. On the papers is the prisoner's name and number. The number refers to a particular screen booth in which he is locked. Opposite him some two feet away is a similar booth with a corresponding number, in which, it may be, is his mother. They may not have met since he was arrested. There are booths to the right and left and above or below on another tier. Each person is talking loudly in order to be heard. (Until May, 1937, when sound control screens were acquired it was literally bedlam and the most impossible place for emotions to find expression.) Their eyes meet. There is so much to say, to explain, to ask. But the deafening noise prevents. They too have to shout when tears make words impossible. All the reasons the boy may have had ready for her vanish. If he is guilty, it is equally hard to explain. As likely as not his mother cannot credit what has happened. She may want to know what to do. Or she may be there to say "I told you so," and he has to accept rebuke when he wants some money and clean clothes.

Not infrequently one finds people who have given

up trying to communicate, or whose lives are so shallow that, even under the circumstances of trouble and need and aching desires, there is nothing to say. They stand there, listlessly, like caged animals, waiting for the twenty minutes to pass. Others talk animatedly in a babel of tongues, some laughing, some serious to the point of hysteria, trying to fill the all too short minutes with more than can be said. Parents, brothers, sisters, friends, lovers, who have waited, first on the street and later in a small hallway of bars and uniforms, with the noise resounding from the room upstairs, the room in which they are now, try in their own way to fulfill the social task they have assumed of visiting those in prison. It is a hard duty in such a setting. Both they and those whom they have visited have much to think of when it is over, things they meant to say, but did not, and could not remember, things that if said might have made a difference to the feelings and loyalties of the other. Some refuse to allow their mothers or wives to visit them a second time under these conditions. Fortunately or unfortunately, all this can be gone through only once in a day. No prisoner can receive more than one visit in the course of a day, but anyone who wishes may visit him. Accomplices wanted by the police venture into the visiting quarters. They are in little danger of apprehension unless the police are especially concerned with a particular case. The keepers who cover the visiting arrangements have no knowledge of the prisoners or of their crimes and simply observe with

faithful diligence the rules laid down. A friend may call on a prisoner before the arrival of a relative who has gone to great trouble, or possibly travelled from a distance, but because of the rule of one visit a day, the relative must be turned away. People from other cities whose sons have been arrested in New York arrive on weekends in anxious concern, only to be met with an inflexible rule about no visits on Saturdays and Sundays. The prison is not sufficiently staffed to meet the human issues that fall outside the bounds of rules required for the purpose of administration by available personnel.

#### LENGTH OF STAY

The question "How long do you think I shall have to be here" is asked anxiously, and of everyone who might give answer, by practically every boy to whom arrest is a new experience.<sup>1</sup>

He has an idea, based chiefly upon hope, that the situation will be handled and the worst known within a few days at most. It is a crestfallen youth who learns that it may take weeks. The prospect at first, because without reason, is in many instances all but unen-

<sup>1</sup>The New York State Crime Commission report gives an analysis of the time elapsing from the date of arrest to the date of final disposition in 3,907 cases of adolescents arraigned on felony and misdemeanor charges in 1929. It shows that 969 or 25 per cent were promptly disposed of within a period of one to five days following arrest; 1,362 or 34 per cent took from six to thirty days, 822 or 21 per cent required from thirty-one to sixty days, and 752 or 19 per cent required from sixty-one days to over six months.



endurable and he grasps at the idea that his case may be an exception. It never is and he learns to wait, sometimes with patience, but more often without it. To go to court for trial time after time and not "reach," adds to the sense of the system's general indifference. No one explains why the case was not reached. No one in the system seems interested. Adjournments and postponements affect him the same way. There is little imagination or consideration exercised by judges or in the district attorney's office. Instead of the next day, as it often might readily be, it is the corresponding day next week or the week after that. No explanation is given the prisoner as a rule. No account is taken of the feeling and desires of those most at point, stirred to desperation by the uncertainty of their situation, nor is measure taken of the effect on them of being treated as pawns in a casual game of judicial convenience. Sometimes, of course, delay is due to the prisoner's own lawyer seeking an advantage of some sort for his client or awaiting payment of his fees from slow or poor parents or others, but even lawyers rarely explain their maneuvers or those of the court to their clients.

The period of delay between the time of arrest and final court disposition of a case is the source of as much distress and mental anguish as any other single thing in the operation of the criminal law. "Do you know when my trial is coming up?" is probably the most frequently asked question in the detention prisons of the city. And no one can answer it. There is

no way for an outsider to find out, and no one who might answer it takes the slightest trouble to consider the matter from the point of view of those persons in the situation, or in the community, who are concerned. The constitutional right of defendants to a speedy trial, while not nullified by present practice, is seriously threatened, and the indifference and lack of organization on the part of the officials responsible contribute not a little to the creation of bitterness and resentment on the part of those waiting trial. The first shock of arrest is fraught with social and moral possibilities. When it is not utilized, a serious wrong is done to the person who might thus be helped to a better outlook and attitude, and also to the community which must bear the burden of his dulled sensibilities and his contempt for legal processes induced by the indifferent treatment of those who direct those processes. "Speedy trial" is usually the cry of the reformer, who would solve the problem of crime by repression and "hard-boiled" tactics against the criminal. To him it has point for the deliberate, scheming, well financed criminal who, by delay, can gain advantage. But it has even more point for the boy or man unaccustomed to confinement who chafes inconsolably under the strain of unexplained inaction. When he is worn down to the place of accepting it, the harm is done, and sometimes, far more often than is realized, the road is turned toward the wrong. It does not take long for a youth, unaccustomed to repressive discipline, to become inured to

a slow hate or to a light-hearted cynicism. The criminal justice system, no less than any other human institution, should be aware of what it does to plastic youth by its failure to extend recognition in moments of crisis.

#### ATMOSPHERE

Thus it is that everything, within and without, conspires to create an atmosphere of repression, helplessness, frustration. And this atmosphere reeks with the inevitable precipitates of this treatment. To record the expressions from the lips of youths, or others, so treated, would be evidence enough to arouse a community to the fact that it maintains centers of moral contamination rather than correctional programs in its penal system. Ordinary pornography crumbles into references to degeneracy; conversations are endlessly interlarded with expressions of obscenity, vulgarity and blasphemy. The dirty story of the street corner becomes a song lilted jokingly to the fellows in adjoining cells, stopped perhaps by the keeper, not because of its subject matter but because it is noise, by his pounding for order on the radiator pipes with his heavy keys. Not every boy falls into all of these ways and not every hour is so occupied, but it is the atmosphere in which every boy has to live during his stay. No special effort is made to change it and it is accepted by those in charge without concern or notice.

At the same time in the midst of all this is to be

found evidences of real character. The boy in rags who snatched a pocketbook from a well-dressed lady, longing for a cigarette and a bottle of milk, who won't spend the fifty cents his mother left him out of her home relief allowance, because the family needs it and he is going to take it back to her when he is released. The boy who "takes the rap" for a robbery he had nothing to do with, because his pal who did it is charged with something else and "has enough to face without this." The boy who, to protect his family, refuses all information about himself and stands firm against the threats of investigation and the insults of a judge who swears in open court that he will break the spirit of so "obstinate a mule" and let him "rot" in prison until he is of a better mind. The boy who splits his dollar when there is no certainty of others to come and sends the larger part to his friend in another part of the prison who might never have known he had a dollar. The boy who more than anything in the world wants to see his mother, but will not permit her to suffer the indignity and disgrace of seeing him behind bars and writes her lies about how "swell" things are for him. Flashes of uncomplaining courage, smiles that beat back tears, gestures accompanying simple phrases that bespeak penitence, requests filled with thoughtfulness of others—these are the challenges that come to one who has the privilege of meeting them sympathetically. These things find no place in official reports. They are known to none

who write reports or read them. They count for nothing in the judgments that are passed upon those who express them. They are frozen in official routine, still-born in a poisoned atmosphere.

#### SOCIAL SERVICE

Social service in the midst of all this welter of need is practically non-existent. To keepers and runners, both without training or resources, are left the tasks of counsellors and comforters. Needless to say these tasks are but passingly seen and done. It is a rule of the prison that a prisoner upon arrival may have free of charge the privilege of one telephone call or one letter. No regular method of informing prisoners of this rule exists. They may or may not find it out. Telephone calls will be sent out only if the exact number is known to the prisoner. The prison will not go to the trouble of looking up the number in the directory or tracing down a place or a person through the operator. If a prisoner has no money, and a very large number do not, he must go without the most dire necessities of washing soap, tooth brush, postage, barber service, tobacco. These are obtained, if at all, through the generosity of other prisoners. As already indicated, sharing is a mark of prisoners and all needs are thus partially met. An extreme lack of clothing or shoes gains a ready response from the keeper in charge of the storeroom where are kept all discarded garments and unclaimed packages.

**LEGAL SERVICE**

The need of legal service may go unmet until court is reached and a reliable, or unscrupulous, lawyer is assigned, with consequent delay. Or lawyers, good and bad, may be recommended by fellow prisoners, runners, and other chance acquaintances. At the time of arraignment some friend or relative, having been advised of the defendant's plight, may send a lawyer. Persons on bail usually have opportunity and means of securing legal service. Most prisoners who are unable to secure bail are arraigned for pleading without counsel. In such instances the court inquires whether or not the defendant intends to employ counsel. If he does not, the court offers to assign an attorney to represent him.

Most of the attorneys to whom cases are thus assigned are attorneys who have been recently admitted to practice or attorneys who depend upon such assignments for a livelihood. The qualifications of an attorney accepting assignments are rarely, if ever, inquired into by the Court and it has been demonstrated frequently that the capabilities and efficiency of such persons oft-times results in gross miscarriage of justice. These results are the direct responsibility of the bench. It is not uncommon for a young attorney recently admitted to the Bar to accept cases of assignment from the Court merely for the purpose of obtaining experience in the trial of cases. The counsel's real duty to the client is to investigate the case and

if possible present the facts which would warrant the Court and the District Attorney in reducing the charge, and the corresponding penalties. However, in the anxiety and the desire to try cases some lawyers sacrifice and jeopardize this disposition of the case to satisfy their individual desire for practical experience. Attorneys who for years have made it a business to seek court assignments frequently make every effort to extract exorbitant sums or fees from defendants. It is not uncommon for relatives of the defendant to be hounded by these lawyers to part with jewelry, household articles, property, and other readily salable articles in order to meet their demands. Frequently the case is simply abandoned if the defendant's friends or relatives are unable to meet these demands.<sup>2</sup>

Section 308 of the Code of Criminal Procedure provides for the defendant's appearing for arraignment without counsel and being informed of his right to counsel. An examination of the section discloses that the only compensation allowed in it is in the event that the offense charged is punishable by death. In all other cases no compensation is allowed. It is clear then that counsel taking assignments in cases other than murder in the first degree must seek their compensation from some source close to the defendant. While the statute does not directly prohibit the solicitation of funds from the defendant or his relatives,

<sup>2</sup> In 1935, 110 such cases abandoned by assigned counsel were later assigned to the Voluntary Defenders Committee of the Legal Aid Society.

the implied terms of the statute preclude compensation other than that which is provided. The theory underlying this situation is that the Bar generally, when called upon by the court to assist an indigent person, shall do so gratis. However, actual practice is far from the spirit of this theory. The Voluntary Defenders Committee of the Legal Aid Society, organized in 1917 to meet just such abuses, is prepared to take all needy cases without exception, but in spite of this it is assigned only one-fourth of such cases by the court.

The Court assigns counsel when a defendant is arraigned after indictment. In other words the first opportunity which the defendant has, assuming he is without resources, to confer with counsel is after the hearing in the magistrate's court after indictment, and after days or weeks of waiting in a detention prison. This, as has been noted, is preceded by questioning by the police and other agencies of the State. Since the State has questioned the defendant and conducted preliminary hearings in the preparation of the case without affording the defendant an opportunity to seek the advice of counsel, it is especially important that he then be assigned a capable defense attorney.

#### PLEADING

The contest between the law and the accused reaches its highest point of importance in maneuvering for pleas of guilt on reduced charges. Defense



counsel, if skilled in estimating the evidence in a case, can predict the probable outcome of its presentment in court. The prosecuting attorney can do likewise. To settle the issue by permitting a plea to a lower degree or to a lesser charge saves all parties concerned both time and money and generally serves the "ends" of justice since the charge, its definition and treatment are so artificial. The permission for a plea does not rest with the district attorney alone but requires the approval of the judge. Sometimes the bargaining is based on facts relating to the acts charged, but more often than not it involves the social or personality problems of the defendant, and appeal is made to sentiment, influence, or the social need of the individual involved. The procedure is all but necessary under the law as it perforce operates. The rigidity of law is made flexible by the process and a definite social purpose is served. This service is based on no articulate principles, but is a matter of caprice and uncertain chance. The district attorney's office and the court frequently refuse to consent to an alteration of the original charge. It is the variability of the procedure that creates not only a sense of uncertainty about its working in particular cases, but also feeds a sense of unfairness in the persons refused. One person may get a plea to a degree of the original charge which causes his being sent to a reformatory for eighteen months, while another with the same charge is sent to prison for a period of years.

A variety of factors are of moment in this quite

variable procedure; the passing mood of the judge or assistant district attorney, the degree of experience of the defense counsel, the interest of the press in crime and punishment at a given time, the general average of convictions in the district attorney's office, the attitude of the complainant, and so forth. The district attorney's office scores a point without effort in the process of accepting reduced pleas; the defense attorney also has a victory which he can magnify as he will before the client and his family. Almost everyone can take credit for the result. The judge, however, can upset the arrangements as well as the defendant's hope and expectation, by giving him the maximum on the lower plea instead of the minimum on the original charge, which, in some instance, may amount to the same thing. Usually, in sentencing a person whose plea has been reduced, the sentence is based not upon the plea as arranged but upon the fact that it has been reduced. The scheme of law which makes this necessary is more reprehensible than the practice of reducing pleas, which frequently must be resorted to in order to secure some semblance of justice. Where mandatory laws exist some counteracting arrangement must be devised to avoid their intolerable harshness in particular instances. The result of reducing pleas, however, is neither truly penal nor wisely social, but is a medley of conflicts and contradictions.

## SENTENCING

Pleading and sentencing have very close relations. Under the present system, both ignore to a large extent the nature of the persons involved and are concerned with the application of rules to acts without regard to the causes of the acts or the effect of the rules' application upon the actors.

Judges have a certain duality in their point of view about the penal law. Their tendency is to regard it impersonally or abstractly when a defendant is not actually before them, even as the legislators who make the statutes. The statutes themselves have an impersonal or abstract quality inasmuch as they are designed to meet situations in anticipation. In actual practice, however, the court has to deal not only with statutes in relation to a particular set of acts but with a complex set of human and personal factors peculiar to a particular defendant. This gives rise to a second phase or viewpoint wherein the human element exercises a potent influence and often leads to compromises which are in conflict with punitive statutes. Where sentences are mandatory as in the conviction of second, third and fourth offenders, the attitudes of judges are of no special importance, except where they can call a felony by some other name. Attitudes of judges are important, however, in cases of youthful first offenders and in cases involving circumstances that exert a more or less intense human appeal to judges, district attorneys and counsel for the defense.

The weight of this human factor varies with individual judges, but, by and large, there is a constant appeal to the discretion of the court.

Although discretionary sentences follow a general pattern in relation to particular types of individuals and crimes, even in this pattern there is a very wide variation. The same crime committed under almost identical circumstances by different individuals can result in sentences differing from one another by a score or more of years, the difference depending not upon the crime charged and the law governing it, or the personality make-up of the persons involved, or their social status, but upon the judges' mood or feeling at the time. Possibly nothing so embitters prisoners or complicates prison administration as this disparity.

The New York Crime Commission found that judges gave boys and first offenders no greater consideration than others. Not infrequently, too, when investigation shows that boys have no suitable home life or no home at all they are sent to penal institutions as a solution of their social needs. It is difficult to see how such substitution of a stay in a penal institution could possibly benefit the defendant or society. No one seems to see that at the end of a term in a penal institution there is still no home to which the boy, who had no home when he was sentenced, may go.

The present system results in probation depart-

ments being more concerned with investigation prior to sentence than with working out the problems of those offenders whose situations are the cause of their offending. Because of limitation of resources and personnel the responsibility for many boys is passed along to reformatories and vocational institutions. The need, in our judgment, is for a more adequate system—one which will make possible a readier assumption of a service role when dealing with difficult social situations.

#### THE SYSTEM HANDICAPS ITSELF

Even under the present system of criminal law all of the 16- to 21-year-old group of first offenders are regarded, theoretically, as having some capacity for reformation. The notion of prospective rehabilitation is implicit in the indeterminate sentence law and in the substitution of reformatory training for outright penal servitude. Although the state seemingly believes in the possibilities of reform after an offender's conviction, it nevertheless begins with procedures of accusation, arraignment and detention which militate against the task of the reform. The accused, following arrest, journey from police cell to court "bull pens," to the Tombs and back to court; they are shackled, gazed at and condemned. Deep-grained psychologic shocks are sustained in going through the detention experience. It is a poor beginning for the reform process; it is a senseless prelude to probation;

and it is a barbarous treatment of the considerable number of persons who are eventually found to be innocent.

Instead of subjecting all offenders to the present indignities connected with detention, on the ground that some may be found deserving of imprisonment, all should be protected against practices that are outrageously unfair to the innocent and detrimental to the guilty whom the criminal justice system will later seek to reform. By shielding all against the hardening effects of detention prior to final adjudication, society would forfeit no opportunity later to coerce those who can be managed in no other way; it would gain much in smoothing the way for rehabilitation of others, and it would obviate the cruel injustice which befalls the innocent.

## VI

### Reformatories and Prisons

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It is difficult for anyone who does not have to suffer the experience of incarceration in a reformatory or prison to know what one is like from the inside. A visit of inspection is of little value. The visitor sees only the physical plant. He is shown the buildings, the office, the hospital, the kitchen, the dining room, a few sample menus. He has a loaf of bread broken open before his eyes to demonstrate the texture of it. The services to the inmates are emphasized and reiterated. The menus, carefully typed, and the carelessly torn loaf of bread show clearly that they "get better food than lots of people outside." A forced, or even a genuine cordiality prevails. Mingled into the conversation are comments about inmates and about delinquents in general—portrayals which tend to set offenders apart as a special kind of creature, albeit in the human species. The daily schedule and routine are explained, the institution's percentage of successes mentioned, and the visitor is bowed out, realizing that he has seen little or nothing, but nevertheless feeling set up by the fact that he has been permitted within forbidden precincts.

It is disheartening to get even a glimpse of what

life in reformatories, even in the better ones, is really like. They are all more or less alike and all, inevitably and inescapably, are bad. It would be humanly impossible to deliberately mingle hundreds and sometimes two or three thousand persons brought together on the sole basis of crimes committed and secure socially constructive results. Reactions are bound to be negative when people are brought together to be punished, forced into idleness and routines that have only the slightest relation to them as individuals, obliged to submit to armed authority, locked for hours each day in cells of brick and steel, watched, and distrusted completely and continually.

In an outstanding study of reformatory results, Sheldon and Eleanor Glueck established the fact that, out of five hundred and ten men who left the Massachusetts Reformatory during the years 1911-22, eighty per cent were not "reformed" five to fifteen years later, as judged by the further commission of crime after discharge.<sup>1</sup> "This is a damning piece of evidence," writes Dr. Richard G. Cabot in the foreword of the book, "not against the reformatory in particular, which probably stands high among institutions of its kind, but against the reformatory system in general."

He goes on to ask, "Why should men change bad habits and acquire good ones merely because they are confined for a little over a year in an institution

<sup>1</sup> Foreword to *500 Criminal Careers* by Sheldon and Eleanor T. Glueck. Knopf, 1930.



where they are forced to do work in which they have little or no interest? Why should this regime reform anyone? In my opinion there are few tougher and more unyielding structures in the world than a bad habit. It does not change as the result of a few months of forced unpaid and unpalatable labor. I doubt if anyone knows what will change such habits within a short time and under the conditions of institutional life. So far as I have seen such reforms, or heard of them through others, there has been at least one necessary condition: that someone should come to know and to understand the man in so intimate and friendly a way that he comes to a better understanding of himself and to a truer comprehension of the world he lives in."

#### THE PRISON LEARNING

Men in a prison are in some ways no worse than those outside, but they are goaded into foulness by the system of which they are the victims. They run the prison their way in more respects than even the wisest officials known. They spend their time learning every detail of administration, every weakness of guards, and other workers. They learn a double-faced game that brings satisfaction to their egos and develops a cunning that outlasts prison and is carved deeply and forever into their character. Those who return to crime are not so easily trapped a second time. They have learned the importance of taking extremely careful precautions against detection. This is

one of the reasons why the apparent rate of recidivism is not higher during the first few years after release.

Ceaseless war is waged with the keepers, their natural enemies. Outwardly there is conformity and co-operation. Usually every shop, office, department, has inmate service and assistance, and, as far as appearances go, there is only a smoothly run machine. But within is another world into which are admitted no officials or keepers, and not even all the prisoners. The codes of prisons are similar in principle to politically run municipal governments. A "stack" or two of cigarettes will buy favors and soft jobs. Every job has its own graft, and fees are split with higher-ups. For so much, one can malingering in hospitals; an unwillingness or inability to "come across" gets one a dowdy suit, a travesty of a hair cut, or a beating up. Through the "big guy," this gang or that gets its way or pays its debts for injuries. Standards of decency are violated, if only because they are standards of decency approved by the society that condemned their violators. And where normal sex outlets are not to be had, abnormal ones find easy justification. In such an atmosphere of cunning, force, graft and immorality, boys sent to reformatories or prisons live for a year—or for a number of years.

Perhaps some boys' own stories of their reformatory experiences will be more convincing than a general statement of what reformatories are supposed to do.

## LIFE IN A REFORMATORY

One boy's unchecked description of his place of sentence was substantially as given below. This is significant as showing the contrast between the intention of the administrators and the effect of an institution on a boy.

About eight o'clock the lot of the week, ranging in number from six to twenty-five, was packed off to the railway station in a "moving van," all handcuffed in pairs. They were paraded through the station in full sight of the early morning crowd of commuters, to one of the day coaches of a train. Contingents of the sort usually occupy only a section of the coach and those in them are subjected to whatever gaze of pity or curiosity other passengers want to cast in their direction.

The first procedure at the institution was to relieve them of civilian clothes and to substitute "prison clothes." After the required shower bath and before the prison garb was handed to them, "the man from the laundry" made a detailed search for smuggled narcotics and a doctor in an adjoining room gave them a superficial physical examination to catch any possible contagion. Being boys, most of them had never thought of drugs, except possibly the few who had sampled marajuana, but under the suggestion of possible addiction, simulations and substitutes occupied the attention of not a few. Aspirin, secured by one ruse or another from the hospital, was ground up

and mixed with tobacco and the combination inhaled.

The incoming group was kept in quarantine for two or three weeks, depending upon the number of admissions. The place itself consisted of a large semi-circular room with several half-windows and a toilet in the back. There were chairs and tables, one checker board, playing cards, left by the previous quarantine group, a few magazines and books supplied by one of the chaplains, a radio and a keeper. No employment was provided. There was no organized recreation or exercise and no directed activities of an educational or cultural type. Except for sleeping and routine interviews, two weeks were passed in this room with whatever conversations and occupations such a group could devise. Occasionally, it was reported, boys spend their entire time in the institution there, by way of protection from other inmates. One boy spent two years in such quarantine "because he snitched on the two fellows who were in on the job with him." Another, constitutionally conditioned so as to need protection, spent a year there. The hospital provided similar refuge to certain others for longer or shorter periods. "Nobody can get tough in these parts of the institution because there is always someone there who can 'take care of him.'"

In the afternoon of the first day the group was taken to the administration offices for individual interviews with various officials. The substance of the interview with the warden, as impressed on this boy,

was concerned chiefly with rules and their observance: "If you want to listen to the wise guys of the place, all right, but you will do a good bit if you do; if you want to start any trouble in here I am the one who can take care of you; say 'Sir' to the keepers and take your hat off when the warden passes. Stand up when visitors come."

A chaplain in another room next interviewed him. "He talks to you about five minutes and just asks what parish you belong to and whether you go to church regularly. He gives you prayer beads and prayer book, that's all."

The second day was occupied, in part, with hair cutting in the morning, and physical examinations in the afternoon. This latter included a blood test "to see whether you got any venereal disease" and "shots in the arm that make your arm swell up and keep you from sleeping at all that night. They give you one every week for five weeks, but only the first one makes your arm swell up." After these necessary preliminaries the two succeeding weeks were passed in quarantine before "going into the yard." The day before this important event there was another interview with the warden. "He asks you what you would like to do, but he had it already figured out. He just gives you what you are going to do. He says, 'You work in Mr. So and So's gang on the farm site, or in the auto shop or the horse barn, cow barn, plumber's shop, tailor shop, electrical shop, bakery, kitchen, or just in the pick and shovel gang. He gives you a cell,

too, and tells you what building you are to be in.' ”<sup>2</sup>

“Going in the yard” is an occasion of critical importance. It is the time when each boy’s social status is determined. It is the time of acceptance or rejection by the crowd, and of initiation into the standards of behavior and the peculiar loyalties that constitute life in this reformatory. When the day arrives the new group is simply turned out into the yard which is divided into four quarters by walkways. Two are for white and two for colored boys. The colored boys are absorbed rather readily by their own group, due largely to the constant antagonisms that prevail between the two color groups. The Negroes have their own dining hall, a separate section in the auditorium, and separate tiers of cells. Both sides of the yard have their cliques, but the rivalry is chiefly on the white side.<sup>3</sup>

There are gangs made up of boys from different parts of the city. Each will claim a certain number of benches. “You can’t sit on any of these benches if you don’t belong to a gang.” These benches are the principal factors in the social life and every other kind of life in the institution. One belongs only by invitation and a boy who gets no bid is called a “creeper.” Invitation comes either on a basis of previous knowledge by members of a bench or by testing. The new fellows are tried out in a variety of ways in

<sup>2</sup> The function of trade training has since been turned over to an assignment board.

<sup>3</sup> This color problem has also been boldly faced by the new administration and the color line disregarded, at least officially.

the first days of admission to the yard. "Guys will come up to you and try to find out where you are from, who do you know, what's your charge. They want to know whether you had partners and whether you snitched on them or your partners squealed on you. They figure what's the use of several guys doing time just because somebody talked. They watch you, too, to see whether you are looking for trouble. Some guy'll act tough and say, 'Give me a carton of cigarettes by next week or I'll knock your head off!' If you don't say nothing or act afraid they know you ain't got the guts. If you say, 'You give me two cartons or I'll knock yours off, and don't take any guff off anybody they know you ain't afraid. Within a week they know what kind of a guy you are. If you pass, they invite you to a bench. If you get on a bench they have to know you can take care of yourself. Nobody fights fair, at least on the white side of the yard. Two or three guys always jump on one guy. If you belong to a bench, the fellows on your bench are supposed to help you. If they get into trouble you have to help them, no matter who it is they are fighting. The colored boys put on gloves and fight it out fair, but the white boys don't. If a colored boy hits a white guy, even a creeper, all the white guys, regardless of benches, go over and beat the Negroes."

In the winter there is no yard. Crowded basement halls take its place and all this testing of loyalties and "guts" takes place at close quarters. The presence of keepers in either place makes not too much difference.

"Some keepers are afraid and they just don't see nothing or know nothing." As for the boys themselves, the rule prevails, "No matter what you hear, you don't hear nothing." "A Gold Badge" is ostracized completely. He is one who "runs to a keeper with anything." The creeper is excluded from the plans of the larger group. He has to conform to the dictates of the crowd, however. If kidney stew or beans appear too frequently on the menu, a strike order is sent out, and woe betide the person who unfolds his arms or touches a crumb throughout the meal, no matter how hungry or how fond of the diet objected to by the crowd.

The economic life of the place is one of barter. Cigarettes are currency. "They are better than money and are the most valuable things there." Those who receive little money from outside become victims of a miserable system of usury. "If you have no cigarettes, fellows lend you some, but you have to double the number in payment, and that doubles every week you can't pay." Those who get no money from outside either have to accept a status of complete poverty and its subsequent denial of all luxuries, or sell their labor or loyalty and sometimes themselves. The commissary operates only once a week. On Tuesday prospective purchasers "put in a slip" specifying their wants. This is checked against their office accounts and on Thursday the order is secured. A week's supply must thus be bought at once. It must be hidden or otherwise protected. Inmates and others in shop and office positions often join in the hiding and protecting



process for a share. Obviously the weaker boys who have money buy their way to favor either willingly or unwillingly; those without funds go to the wall.

The institution day begins at 7. Breakfast is at 8 and lunch is at 12. Work periods last until 11:30 in the morning and from 1 to 4 in the afternoon. In the winter supper is at 4:15. The boys go to their cells at 5 and are locked in at 5:15. In summer supper is at 6 and free periods in the yard are permitted from 4 to 5 and from 6:30 to 8, at which hour they are locked in for the night. There are no washing facilities or toilets in the cells. If need for either arises after being locked in, fingers are snapped through the cell door to attract a keeper's attention. After the lock-up no talking is supposed to be done. However, "some keepers are lenient and let you talk low, but some of them don't let you do anything. If you make any fuss they come in and smack you with their fists or sticks." Specified tiers go to the gymnasium one evening a week. It is one of the advantages of being on the kitchen squad to go there every afternoon from 2 to 4. In the winter time most of Saturdays and Sundays is spent in the basement halls, milling about and finding what occupations one can, but in summer this time is spent in the yard. There are moving pictures Sunday afternoons in winter. In summer athletics are substituted and the pictures are shown in the evening.

Little complaint is made about the food. Breakfast consists ordinarily of cereal, coffee and bread. There are prunes or apricots on the tables but "nobody ever

eats them." Dinner is a full meal with soup, meat, potatoes and a vegetable, dessert and milk. Desserts consist chiefly of jello, puddings, apple butter, jam and bread. Pie or cake is served once a week. Supper consists of cold meat or beans and salad. At the end of each meal at which knives and forks are permitted, each boy takes his "silver" and deposits it in boxes under the watchful eye of guards.

Saturday morning is the appointed time for baths. In summer an additional bath is permitted on Wednesday afternoons after work. The kitchen squad has two baths a week and three changes of clothing regardless of season. The others get one change of clothes a week in winter and two changes in the summer. These consist of pants, shirt, coat and underwear, with the prevailing color changing from brown in the summer to blue in the winter.

Boys may stay here from three months to three years. The time is spent quite largely in talking over offenses and "looking forward to getting out, and so that they can rob this place and hold up that one."

#### AN INSIDER'S ACCOUNT

Another boy's story was written down somewhat as follows:

"On June 12, 19— at exactly 6:10 P.M., if you were travelling a certain turnpike in your car, in all probability you would have seen the gates of a penal institution close upon fifteen 'menaces to society'—put in for a specific amount of time in order that society

could exact a just tribute. If you were in a position to follow this sorry load of humanity beyond the walls, perhaps you would have found it easy to sympathize with them. The first stop for the new 'Cons' is Store 'B' where the garments of civil life are exchanged for those of the convict. Upon arrival in Store B, each Con is forced to strip entirely, given a towel and a half bar of soap (made of lye and God knows what else), led into the shower room, and given what is commonly called the disinfectant bath.

"From Store B you are gently led by a 'Screw' (Screw is the name given to the guards by the Cons—a sort of love term), to the receiving gallery where you are locked into what is called a cell but in reality is a miniature hotel for roaches, bed bugs, etc. From then on you are on trial. I don't mean trial as termed in the courts, but trial defined as 'Prison don't break a man, but if he has any yellow it will show.' That is the kind of trial I mean.

"The first inmate you really talk to is the Water Man, the mug who, through influence exerted by the Ring Guys (Ring Guys meaning those inmates working for officials of the institution as clerks, secretaries, etc.), is given this job in order that messages can be relayed, a sort of grapevine system of telegraphy. As he fills up your tin cup with the allowance of water, the conversation is begun, and if you are a new Con the inevitable question is 'Where're you from?' If you are lucky enough to be from that part of the state that is the stamping grounds of the mob then

in power in the institution you are assured of every luxury—that is, prison luxury such as ‘butts,’ papers, magazines, fruit and food. In my group was a well-known member of the ruling mob, and he was in clover after being in the prison not more than an hour. This same Torpedo (Gun Man) was later to be one of the best friends I ever had.

“The next day you begin interviews with the Doctor, Superintendent, Psychiatrist, Chaplain, School and Trade Director. That is, you are segregated until you have completed the calling list mentioned above. Then and not until then are you really and truly, in the inmates’ sense of the word, a convict.

“It was my luck to draw the — Shop with my friend whom I have referred to as the Torpedo, Louie by name.

“Of course, when we reported for duty at the shop, his mob had passed the word for the mugs to see that he was well treated. I, myself, not being so lucky was given the worst part of the work that was in the shop. As I was working, Louie passed my table saying, ‘Follow me, Lefty.’ When we were beyond earshot of the screw he offered to speak to the leader of the mob and get me in with the boys. I state here and now that I never did have any regrets that I did go in with Louie and the mob.

“The next day at roll call he told me to attend the church services and to sit as far back as possible. This I did. I was ignorant of the fact at this time, but later found out that this was the mob’s line-up—

such as is in vogue at Police Headquarters. In this way every one of the boys gets a look at your face and if there is nothing against you, you are let into the mob. I was informed the next morning that everything was O.K. and if I got in a jam to mention I was a friend of So and So and mug of the — Side Mob. Everything progressed very nicely for me. I was still working in the — Shop but rapidly becoming disgusted. By that time, of course, I was thoroughly wised up to the ins and outs of the prison and had made up my mind that I was going to be a Ring Guy. It was hard for our mob at that time as the Chief Clerk in the Record Office (the highest ranking inmate of the prison) was a Jew belonging to another mob comprised chiefly of Jews and Wops. Naturally he was in a position to put such inmates as he wanted into the best jobs, and gradually build up an organization that would eventually wipe ours out.

“About this time I had the luckiest break in the world. I had heard previously, through a whisper here and there, that there was going to be a vacancy in the hospital for a clerk and one preferably that could run a typewriter. I immediately claimed to be sick, saw a doctor and received some cough medicine which I promptly threw in the refuse can—this, however, gave the opportunity to speak to the officer in charge of the hospital concerning the job, who told me if he could secure it for me he would do so as he hated to see a nice Irish lad like myself in trouble. Imagine my feelings when I received a slip in my cell inform-

ing me to report to the hospital for work. When Louie heard about it he became as sore as the devil, figuring I had given the mob the double cross and gone over to the Jew's mob. After I had convinced him of my loyalty the word was passed to the other boys. Immediately word was passed from the Big Boy, the boss of the bunch, to behave myself but watch out for a 'chive' (meaning knife). It seems the other mob already had a man picked out for the job that was given to me and were feeling sort of sore about it. I can substantiate this statement to this day by the scar I have on my left cheek and by the memory of the numerous bumps on my head. My life was a living hell for my first two months in the hospital as the chief clerk of the hospital was a Jew by the name of H— who was nick-named the Duke. His time was up in September, and after much trouble, wire pulling, graft (paid in the form of cigarettes), and promises, I was elevated to the chief clerk's job. By this time I had earned the reputation of being a regular guy, which can be verified by the fact that after being in the institution less than five months I held the second highest inmate's job in the institution.

"After my promotion to chief clerk I became wise to the worst racket in any institution and one that flourishes in all institutions. Anyone who reads this will readily understand what I mean when I say sexual pervert. These unfortunates are referred to in prison as 'punks' before being confined to the in-

stitution, but a great many of them are forced to submit to these practices because they haven't the courage to fight back at the torpedoes that are sent by the different mobs to see 'what can be done with the guy.' While acting in the capacity of chief clerk I was in a position to admit men to ward x of the hospital and keep them there (by crooked means of course) as long as I wanted to. I am no better morally than the other fellow but I can truthfully say I have gotten 'punks' into the hospital to be used by other inmates when my whole being revolted at the idea of young kids that couldn't stand the gaff, yellow, just without friends and willing to do anything to keep from getting beat up. These sorts of kids stand out in my mind very prominently as when I was given orders by the boss of the mob to put Con No. — on the ward and keep him there. At sick call he came up to the hospital, passed me the sign and I put him up there and kept him there, for about sixteen days, then discharged him. During his stay in ward x I can say I know for a fact at least fifty mugs were 'fixed up.' It may seem sort of yellow on my part to let this kid be used for these practices when I could have stopped it by refusing to put him in the hospital. But, as I stated before, I joined this mob when I first came into the institution. They did a lot of favors for me, were back of me when I needed help and — 'once in a mob, never out.' At least that rule applies in prison. If I would have refused, the condition of my body with chive marks,

kicks and bruises would have been 'just too bad.'

"However, my worst fears were realized. The officials of the institution got 'wise' to this kid; grilled him and he spilled his guts. Consequently I was the first one questioned. When I claimed I did not have any knowledge of this affair I was promptly thrown in the 'hole,' referred to in the place as Punishment Block, and punishment it is. Your shoe strings and belt are taken from you, the cell is without lights, and you have nothing to sit on—except the floor—no smokes, no magazines or papers. Consequently, one week there is like a year. I was kept there for twenty-three days, questioned, pleaded with, threatened, beaten, my food was given to me cold. Everything that one human could do to make another uncomfortable was done to me, but I was finally let out.

"Upon my release from the hole imagine my feelings when I heard that I had been *PROMOTED* to chief clerk of the Record Office, the highest ranking inmate of the institution. Later I was informed by the Big Boss that this was the mob's way of showing what they could do for a guy that could 'take the rap and keep his mouth shut.'

"The rest of my time was spent uneventfully. I broke in a new member of the gang for my job, thus assuring the boys of a long period of good times. That is, a friend in the high place that would look after them.

"Perhaps to some the idea that a number of inmates who band themselves together forming what is called



a mob could do the things I have said and get away with it sounds rather like an exaggeration. I assure you, however, that whether or not it is admitted by the prison officials, there are in every prison at least six men who are the virtual rulers of the institutional behavior of the inmates, men who are feared more than law. You can run away from the law when you are out—but not the mob, when you are IN—and using the prison slang as I have heard the word passed—‘You’ll fix this for the boys—or else . . . ’ and that else is plenty.

“As I passed out of those prison gates, I marvelled at the stupidity of this Society that put me behind bars to reform me, but who in reality put me behind those bars to give me a course in the inner workings of Gangland.”

#### THE UNDERDOG OF THE REFORMATORY

Eloquent testimony of what is meant to “do time” came one day in the Tombs from a timid, soft spoken Spanish boy, wondering, in his frightened way, what could be the purpose of anyone who wanted to interview him. A second offender might be expected to be tough. Some are; “time” makes them tough. In him, however, was not toughness but a childish naïveté, a simple self-evident inadequacy. Ruled by fear he was without poise or security.

He was eighteen. He had been on parole eight months after serving fourteen months at the reformatory. It is not important to ask what caused him to

be sent there originally, but he had just turned sixteen when it happened. Three weeks after he arrived an escape was planned and attempted by three older boys. For some reason he seemed necessary to their plans and they "persuaded" him to go with them. He did not want to go; it would never have been within the range of his courage to have thought of or attempted it alone. He had but recently come to the States. His language was poor. He was overawed, almost petrified by fear of his companions. "They told me to run. We were together on a job and they wouldn't have had as much chance to get away if I hadn't gone. They made me go. It was cold and snow was on the ground. I was under a bush nearly freezing when the keeper came by looking for us. I was cold, I came out before he even saw me, and he made me tell where the others had hidden. When we got back the fellows knocked me down, hit me, and beat me up. That's how I got this scar on my head. The people in the place gave me more time for running away and the fellows blame me for telling the guard how we had gone."

He jumped from that to his present predicament because it looked as if the unendurable misery of his past experience would have to be gone through again. He was on the verge of tears but he managed to tell his story. A friend had stolen some magazines from a locked newsstand and had brought them to where he was sitting in a park. They were together when the arrest took place; both were charged with burglary.

He was to have been released from parole after his next monthly report. He had never failed to make his report. He recounted the rules on the back of his parole card, giving evidence in his simple way that at least one person had taken them seriously. The one question, however, was not the justice or injustice in his arrest. There was only slight effort at explaining that. The only thing that worried him was the thought, the terrible possibility, of having to return to "that place."

He turned his head, buried it in his arms, and sobbed silently. He recovered quickly with effort. "They called me bad names up there."

"What?"

"Spick, I don't like it."

"Spick, what does that mean?"

"It means Spanish. They don't like fellows they call Spick. They do bad things to me. I was scared to tell the keeper. They tell me what they will do to me if I say anything. I don't do such things outside. I can protect myself outside but not inside . . ."

A year of torturing mob rule, without the courage of resistance, without a moment's security in a welter of forces primitive, crude, rapacious, unfeeling—that is what "that place" meant to him and what he feared, with terrible tenseness, awaited him again.

He did not leave his cell in the Tombs during the two hours of "freedom." He was afraid. He was hiding from the past and its cruelties, the shadow of which lay ominously on the horizon once more. If there had

been any likelihood in the system of "justice" that he would be dealt with understandingly or sympathetically the tragedy of his situation would not have been so great. But there was only the slightest chance. He had been in jail nearly a week. No one had visited him. He had no lawyer, and no idea of how to get one. He had no capacity of expression, except under the impact of kindness. His arrest automatically made him a violator of parole. Being on parole his chances of consideration were materially lessened. The future was darkened by the shadow of "that place." To him it was a credulous society that called it a "reformatory."

#### EDUCATION IN REFORMATORIES A MISPLACED EFFORT

These accounts are not set forth as true pictures of what every boy in reformatories goes through, or as accurate descriptions of the particular institutions at point. There is intended no criticism of their administration. It is the *system*, so untuned to the reactions of human beings and so contrary to the best service of society, that is challenged.

As has been shown, there are two kinds of training in a penal reformatory, namely, that intended by the institution's officials and that gained from inmates in the yard and cell block. Even though education takes hold, to some extent, so that the mind is improved and the hands given skill, it is nevertheless imparted in an atmosphere heavily charged with resentment and unhappiness and accompanied by deteriorating

effects on character. The work-habits established at a reformatory are, in the mind of the youth, habits associated with a temporary, abnormal and despised existence. Life, work and play, he hopes, will be vastly different when he is released; he will certainly wish to make his life of freedom differ as much as possible from his life of punishment. Although it is extremely difficult for the state to succeed in education which is viewed as one of the forms of punishment, it is easy for the released prisoner to turn his back upon the whole training experience.

In addition to institutional work-habits there are institutional companionships. These are not of a normal variety in that they are entirely limited to persons goaded into abnormal attitudes. The effects of the associations, unlike the work-habits, are virtually inescapable and they are lasting. The worst boys in the reformatory are the leaven in the whole loaf, not the welfare and educational activities.

The dual aim of punishment and rehabilitation through education and training in a reformatory is bound to yield meagre returns in the improvement of human beings who are selected on the basis of their marked deficiencies and poor beginnings in life. It is as if a physician in dealing with an incipient case of pneumonia should be impressed by the fact that the patient had contracted that ailment through wrong living and would say to him: "You have a bad case of congestion but I cannot overlook your misdeeds which have brought it on. As a punishment I

am going to send you out in the cold and rain each day for a period so that you will suffer enough discomfort to make you think twice before wasting your vitality again. However, you will be provided with medical attention and nursing, at regular times daily. I hope that the treatments will work and that you will change your mind and go straight when your punishment is over." But the patient will get pneumonia. So will the delinquent get a poorer start rather than a better one after his training under conditions sustained at prison.

It is necessary to be on one's guard against falling under the spell of the strongly approbative terms which are always used to describe reformatories. They are said to promote "new standards of social behavior," to "inculcate habits of industry," to impart "a spirit of fair play in recreation," to give "needed discipline," to prepare boys to become "useful members of society." All of these descriptions have a good ring and pictures of boys poring over books, attentive to their tasks in machine shops, and busy in the fields, produce a good impression. These aims and appearances must not be confused, however, with the actual results. The undercurrents of deterioration in prison life are seldom mentioned and are never revealed by the camera.

Is there any ground for a belief that wholesale reformation of convicted offenders can be effected within large groups? We think that there is not. The belief that feelings of penitence will arise under punish-

ment dies hard but it must be uprooted if we are to deal realistically with the problem of stimulating aspirations of right living among young offenders. The reformatory is a high type of prison well adapted to the purposes of incapacitating the most incorrigible offenders who cannot be handled safely in any other way. But to regard it as a training school suited to the improvement of congregate masses of five hundred to two thousand young persons, or old, is to deceive ourselves with wishful thinking. Just as a prison for adults is in the nature of a university of crime, so is a large correctional training school all too often a preparatory school leading to the university.

It is true, of course, that under the present system of mandatory imprisonment of youths who commit more serious offenses a fairly large number of corrigible offenders are sent to these institutions. The successful outcomes which occur despite the hazards of reformatory life lend encouragement to those who have faith in the value of reform schools. They assume that the institutional training is responsible for the rehabilitation effected. We hold a widely different point of view, namely that instances of the subsequent rehabilitation of reformatory inmates is an indication that such persons need never to have been punished by imprisonment, that they were reformable from the beginning and by less costly and less hazardous means, that they were salvaged in spite of incarceration rather than because of it.

We are not asking for regression to old standards of

reformatory administration. Under present circumstances wherein a goodly number of corrigible youths are sentenced to reformatories there is ample justification for building up the clinical and educational facilities of the institution. It is the sensible thing to do *under present conditions*. But, as we have indicated, the present conditions of mass detention are far from satisfactory. We can only expect diminishing returns when the marks of a penal experience are indelibly imprinted upon the offenders.

Our position in regard to reformatory training schools comes down to this. We are opposed to a system which concentrates within prisons, psychiatrists, educators, vocational counsellors and social workers—society's remedial services for the reclamation of youthful convicts—and neglects to provide such services as a means of saving boys from going to prison. We would, therefore, spend no more money for a new Elmira or for a new Coxsackie with emphasis on more elaborate vocational training facilities and prison clinics for psychological and psychiatric services, but spend it instead for: (1) new arrangements whereby experts would devise plans for rehabilitation of offenders outside of prison and before imprisonment is resorted to, and (2) for subsidies to privately managed small hostels, training schools, work camps and foster homes. These decentralized agencies for rehabilitation of offenders should not be confused with the present probation service. The supervision would be much more direct and effective during the trial



period of social adjustment than any present probation departments can provide. A plan for decentralized control of offenders will be more specifically outlined in the next chapter. We would not do away with the present reformatories, but would use them only as a last resort for segregating those who will not take advantage of guidance proffered under non-contaminative conditions.

We are mindful of the great improvement that has been brought about in reformatory administration compared to what it was a generation ago, and that further improvements are in process of realization. Our contention is that, however worthy the techniques of this newer treatment may be, the limitations under conditions of mass detention are too great; the favorable and constructive factors are, and will be, outweighed by the unfavorable.

When at last the indeterminate sentence to a reformatory has come to an end and the boy has gained whatever advantages may have been derived from his training during imprisonment—we think the disadvantages far greater than the gains—there comes the crucial test of parole. Some kind of employment and a satisfactory place of residence must be found for him. All too often his home, if he has one, does not meet the required specifications. It is now infinitely more difficult to make provisions that will safeguard him against crime than it would have been prior to his commitment as a prisoner.

However broken a boy may be by what he has been

through, his release finds him full of hope for the future. Yet possibly the aftermath of a prison sentence is more discouraging and embittering than what has gone before. He who has served his sentence has a sense of having paid a debt. The computation of the debt is not always clear, and the mathematical principle involved can hardly lay claim to the term scientific. But its results are announced in terms that can be comprehended, and by the time of his release, he supposes that he has squared his account.

He finds, however, that he has not squared it at all. He frequently comes to feel that he will never be allowed to do so. He is haunted all his days with the fear that his record will become generally known. This fear of discovery that would lose him his friends, his job, his place in a community lingers through everything to rob each joy, each achievement, of its zest. It is a brave man who fights it successfully. It is a cruel society that sets him the battle.

Under present conditions, there is a veritable conspiracy of frustration to defeat the boy released from prison. It works relentlessly and with a desolating accuracy, and undermines the hope and courage of many. The greatest needs of those who regain freedom are security and an evidence of friendship and help. Yet not only does society distrust him, but in many cases so does his family, which even though accepting the task of a son or brother returned from prison, displays an anxiety that keeps open his wounds. The healing balm of trust and acceptance,

of genuine efforts to help toward a new beginning is withheld. The experiences of arrest and imprisonment constitute a shock which often causes a boy to hide his true self behind a bold and boastful badness, or to slink, crushed and sensitive, from the sight of all who have known him.

It is one of the anomalies of the legal system that genuine help—parole—begins only at this point, which means almost at the end of the road, and a parole system worthy of the name exists in only a few states. All of the devastating experiences of arrest, detention, trial, sentencing and incarceration have been gone through; months or years of impressionable possibilities have been filled with bars, chains, and unremitting distrust, and spirit-breaking repression; the severance of family and social ties has forced retreat into a welter of false loyalties. After all this a service is made possible that is primarily in terms of helping. For the first time the individual is individualized, is dealt with on a man-to-man basis, and given the sense that someone is sharing the load with him and not making him bear it alone.

Unfortunately, the parolee frequently does not always get this feeling of parole. Why should he? What basis is there for a belief that anyone in the system means genuinely to help? The parole board and the parole officer are to him "cops." "I don't trust any of those guys," has been said more than once to anyone who has known parolees. The parolee knows that it is the parole officer who will send him back

to prison if he makes a misstep. He often thinks the parole officer wants to send him back. The parole officer has to be a kind of super-man to meet the moods and suspicions and overcome the hurdles and handicaps in the way of his clients, built up by a system unattuned to human nature and the fundamental patterns of behavior.

There are few places of residence or of recreation to which the boy who is known to have been "in trouble" is willingly admitted, for it is assumed, without investigation, that every such boy will be a contaminating influence. Many boys' clubs, settlements, and church groups are closed to him; even the military services exclude him. Few employers will knowingly hire a boy or man who has been "sent up." For those boys who have no homes, no families, no friends, the sense of insecurity is intensified. When the time for parole comes boys are frequently held for months because no one can be found to guarantee employment or to provide maintenance while employment is sought.

One employer recently stated the case for industry in forthright terms: "I address my challenge to my state and to the nation: *Keep your convicts or make citizens of them.* If the end of the prison is punishment and the means of punishment is calculated to rob the man of initiative, pride, decency and self-respect—then let the state find a use for the human husk that is left. Don't ask industry to do it." <sup>4</sup>

<sup>4</sup> Christopher Rollman in the *Readers' Digest*, July 1937, from an article in *The Forum*.

Aside from the problem of finding a sponsor and a job for the paroled boy, what is to be said of him as a trustworthy candidate for employment? He often finds it difficult to capitalize any vocational training he may have acquired at the reformatory. Unquestionably he has a much wider knowledge of crime than he had before entering the institution. He knows the disgrace of imprisonment and a second conviction will bring nothing new, hence the deterrent effect of a possible sentence for a new crime is largely lost. He is out of prison, but still a "criminal." At present there is no escaping the classification and it is a terrible handicap. Moreover he is ill-prepared to assume responsibilities in attempting to establish himself in the face of great odds. Over a prolonged period he has shouldered no responsibility other than to obey rules in a life that has been circumscribed and ordered for him by the authorities. He has exercised little or no initiative of a wholesome sort during this dependence. Handicapped by his criminal status he is further at a disadvantage by lack of experience in making his own way in a competitive free society.

Parole marks the end of institutional punishment and the beginning of rehabilitation in the outside world. The prisoner has paid his debt in terms of punishment. Society, having received a payment which is of no value to it, now begins to pay in turn to help the prisoner overcome compounded difficulties.

We wish to see society make an earlier application of its inescapable expenditure for the social rehabilitation of offenders. The time for clean-cut, lasting

rehabilitation is ripe before punishment begins; it is likely to be spoiled after imprisonment. Our aim would be to employ rehabilitation procedures at the outset, rather than at the end of the hardening process. The aim is identical in both instances, but the chances of successful attainment of the aim would be improved by reversing the order of imprisonment and rehabilitation.

#### NEW METHODS FOR OLD PROBLEMS

The New York Crime Commission in its report to the Legislature said, "We look forward to the day when there will exist for adolescent offenders the necessary social agencies devoted to their rehabilitation by means of individual guidance and utilizing the techniques of psychology, psychiatry and social case work. We visualize the re-enforcement of this method of individual treatment by the development of public and private programs of education and training, vocational selection and placement, and of recreational guidance, that will effectively substitute for the legal process. We visualize a generation that will strive to provide for each youthful delinquent an opportunity for normal social development within the normal institutions of our society."<sup>5</sup>

Can we ever be satisfied with our criminal justice system until it has tried in the first instance to utilize methods of rehabilitation less harsh than imprison-

<sup>5</sup> *Report of the New York State Crime Commission, 1931, page 83.*

ment and less likely to be devastating to the individual? But neither private nor public facilities for the non-punitive treatment of young offenders will be developed until the criminal justice procedure has been revamped so as to furnish a legal basis for making use of them. In the following chapter we shall discuss a plan for redesigning the machinery of criminal justice to be employed in dealing with delinquent minors.

## VII

### Overhauling the Old Mills

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IN THE foregoing chapters we have pointed out the weaknesses and faults of the present criminal justice system as it bears upon the youthful offender. It was found that a static penal code based on predetermined amounts of punishments for specific acts is working at cross purposes with attempts at rehabilitation which at best are belated. By placing emphasis initially on an act instead of on the actor and by imprisonment of offenders before estimating their adaptability to society there is much waste of effort, a considerable degree of injustice to innocent persons, and an unavoidable further hardening of the guilty. The quantitative punishment theory of the penal code puts the cart before the horse in administering the criminal law. So long as the system seeks primarily to determine what individuals among all the accused should ultimately suffer punishment by imprisonment, just so long will the delays and contamination of preliminary detention be tolerated as a matter of course. Not until its primary purpose is to determine how many youthful criminal careers can be set upon new paths by non-punitive methods will society be



safeguarded against the dangers of a continual stream of persons contaminated and embittered by the present system.

Some persons may think that nothing is to be gained by considerate treatment of the non-rehabilitable offender who must be segregated in order to protect society, but surely nothing is lost by it, and much would be gained by shielding the others. Every youthful offender should come up for a searching examination and test of his capacity for rehabilitation before selection is made of those who can be managed only by segregation. In order to accomplish this end we propose:

1. That a special delinquency code for minors between 16 and 21 years of age be enacted;

2. that a new court, known as the Delinquent Minor Court, be created;

3. that the court be so organized as to provide for the exercise of two separate functions, (a) a judicial function of determining guilt or innocence of offenses charged and, (b) a dispositional function of determining the form of treatment to be imposed upon those found guilty; and

4. that disposition of offenders be based on a diagnostic examination by experts comprising a Disposition Board, and that delinquent minors be under the control of this board until formally discharged from its supervision, or until an order for indefinite segregation is made by it following a decision that rehabilitation is unattainable.

We recognize the fact that a new code will not in itself effect a solution. But in order to approach a socially effective human service to offenders, the present criminal code and the philosophy behind it must be abandoned. In like manner we face openly the possible failure of another court, even though it be a new one. We realize fully that it will be no better than the persons who administer it, and that routines and insensitive attitudes can defeat its purpose.

#### A DELINQUENCY CODE FOR MINORS

A delinquent minor code such as is here proposed would avoid the felony and misdemeanor classifications of the penal code, do away with mandatory punishment penalties, modify the existing procedural arrangements of the criminal law code, and abolish capital punishment for all minors.

It has been seen that the penal law which attempts to apportion the penalty to fit the crime is constantly being modified by the exercise of discretionary powers on the part of district attorneys, judges and juries. Since the basic punitive object of the law is, in practice, so often circumvented by accepting pleas on reduced charges in order to substitute lighter penalties, it is not unreasonable to propose that the articles of mandatory punishment for minors be set aside and full discretion be given a minor's court to deal with guilty offenders in accordance with procedures that

would seem to be best adapted to corrective treatment of the individual involved.

What justification, it may be asked, exists for thus exempting culpable youths from paying the penalties of mandatory punishment? The fact that minors who commit serious offenses have always been dealt with according to the procedures that apply to adults would scarcely seem to be an adequate reason for its continuance. The New York Crime Commission observed that the "half-grown group of biologically mature and physically semi-mature children whom we designate as adolescents represent one of the most puzzling and least understood elements in our population. Their unstable relationship to the rest of society arises in part out of the uncertainty of their status. Being in transition from the restrictions of childhood to the independence of adulthood, they find themselves in conflict with the adult group, in demanding the freedom which the adult group is reluctant to grant." There is a tendency, the Commission further points out, toward a "general recognition that the adolescent is incapable of exercising complete adult judgment, by virtue of lack of experience, even though intelligence and bodily maturity may have reached their apex."<sup>1</sup>

A minor may not vote, he may not sue or defend a civil suit in his own name. In a criminal action, how-

<sup>1</sup> *Report of the Crime Commission, State of New York*, Legislative Document (1931), Number 114, page 148.

ever, a minor must appear and defend himself in person. He may employ counsel or, if he is unable to do so, the court may assign counsel to him at trial. Under the law an adolescent offender who lacks one day of being sixteen is treated as if he were a child of seven, and the juvenile court having jurisdiction over him is as much interested in determining the social aspects of the situation as the legal. But one who is a day over sixteen is placed on a footing with fully matured adults. Should not consideration be given to the older adolescent's immaturity of judgment in administering the criminal law as it is in respect to his making a contract, administering an estate or exercising the right of franchise? It is not that unadjusted youths are unable to distinguish between right and wrong, but that they may lack the soundness of judgment and emotional stability necessary for making the right choices in conduct.

The preparation of a delinquency code for minors would require throughgoing study and expert legislative draftsmanship. In this report we shall not attempt to do more than outline the basic characteristics of such a code. It should be simple and, above all, easily understood by youthful offenders. It should cover all prohibited acts, or omissions, now included in the penal code and in local ordinances. Five categories of offenses are suggested for use in describing the offenses for which minors may be arrested and held under the jurisdiction of a Delinquent Minor Court.

These are:

1. Stealing
2. Injuring a person or maltreating an animal
3. Misusing the property of another person
4. Committing an offense against public decency, public order, health, safety, and convenience
5. Committing an offense against government, such as counterfeiting, and bootlegging

The above classification will accommodate the description of every existing offense. Although the delinquency code should be all inclusive in respect to acts prohibited by any law or ordinance, no act or omission which is not capable of definition as an offense under existing codes should constitute grounds for proceeding against minors in the Delinquent Minor Court.

Since delinquent minors can claim a constitutional right to trial by jury and thus place themselves under the now prevailing system of criminal law, each charge of stealing, injuring a person, misusing another's property, etc. should include a statement, in the nature of a cross-reference, that the complaint is based on a specific violation of Sec. — of the penal code or Sec. — of the code of municipal ordinances. But the offense of stealing, though translatable into one of many specific offenses, known by other names in the penal code, would not be graded into different degrees according to the value of property taken or

to the manner in which the theft is committed. There would be no differences in penalty fixed according to differences in offenses, no distinctions between felonies and misdemeanors which are based wholly on the kind and amount of punishment to be apportioned to particular acts.

Adjudication of delinquency under a code for minors would not constitute a criminal record of conviction for felony or misdemeanor and would not bring about the civil disabilities that are now sustained upon conviction. Every youth would be given an opportunity to enter upon his twenty-first year, if not with an entirely clean slate, at least without finding doors to civil service positions closed and loss of franchise (in the case of felony.) A record of his delinquency and his fingerprint identification should be kept for further references by the court and the police, but such records should be confidential and accessible only to public defense authorities. There should be no objections raised to the making of fingerprints. It is necessary to have a permanent identification of youths guilty of delinquency. A fingerprint record for one who does not offend again would be undisturbed in a file of by-gones. If he commits other unlawful acts, society, through its criminal justice administration, is fully entitled to know what has gone before.

#### BROOKLYN ADOLESCENT'S COURT

An actual step in the direction of special treatment of adolescent offenders was taken in January, 1935.

A Magistrate's Court in Brooklyn, known as the Adolescent's Court, was authorized by the Chief City Magistrate to give its exclusive attention to the hearing of criminal charges against boys from sixteen to eighteen years of age. This court has exercised powers and followed procedures which are frankly admitted to be extra-legal. The penal code has been "flung out of the window" and the protective wayward minor act has been substituted therefor.<sup>2</sup>

The magistrates assigned to the Adolescent's Court do not stop with the exercise of the limited magisterial powers relating to initial arraignment of persons charged with the commission of serious criminal offenses, but examine situations with the intent of seeing whether or not a socially constructive solution may be found and a criminal prosecution thereby avoided. In respect to serious charges the consent of the district attorney's representative is required for this departure from regular procedure and the magistrate must also obtain the cooperation of the arresting officer and parent or guardian in swearing out a

<sup>2</sup> The Wayward Minor Act of New York, Laws of 1923, ch. 868 amended by L. 1934, ch. 389; L. 1935, ch. 389; L. 1929, ch. 106.

A wayward minor is defined as "any person between the ages of sixteen and twenty-one who either (1) is habitually addicted to the use of drugs or the intemperate use of intoxicating liquors, or (2) habitually associates with dissolute persons, or (3) is found of his or her own free will and knowledge in a house of prostitution or assignation or ill fame, or (4) habitually associates with thieves, prostitutes, pimps or procurers or disorderly persons, or (5) is wilfully disobedient to the reasonable and lawful commands of parent, guardian or other custodian and is in danger of becoming morally depraved."

wayward minor complaint. Serious charges are, as a rule, passed on to the criminal courts and their procedures.

According to the present practice in this court it lies within the discretion of a magistrate, in hearing the case of a youth charged with an indictable offense, either to bind him over to the Grand Jury or to put aside the penal code and, with the necessary consents, to adjudge him a wayward minor. If the first choice is made the magistrate, under the law, can have nothing to do with final disposition of the case. If the latter course, for which there is no legal foundation, is followed, the magistrate has complete jurisdiction over treatment and may place the minor on probation for a period not exceeding two years or commit him "to any religious, charitable or other reformative institution authorized by law to receive commitments of persons over the age of sixteen years."

The procedure followed in the Brooklyn Adolescent's Court is a legal subterfuge but slightly disguised, defensible only on the ground that the end justifies the means. But the means is not all that is to be desired. It is an irregular procedure bearing some resemblance to the traditional court appearance and in other respects resembling a social investigation. For want of more suitable quarters, hearings are held in an ordinary open court room. The interested parties—defendant, arresting officer, parent or guardian, sometimes also complaining witnesses and defense attorneys—stand in a huddle before the magistrate's



bench; there is an informal recital of the facts bearing on the accusation, which, nevertheless, is formally documented; an assistant district attorney is present to hear the proceedings. In cases which seem to be marked out for lenient treatment there is frequent mention of the fact that the court wishes to help not to hurt the accused youth. The boy's general attitude and his past record of delinquencies are often decisive factors in determining whether the magistrate will declare him to be a wayward minor or bind him over to the Grand Jury. The announced intentions of helping the penitent offenders are mingled with lecturing, warning, even threatening. The proceedings appear to be based largely on bargaining with defendants and their parents or kin; leniency is bartered for good promises. The harder sort are not softened by threats and the weaker are not improved by admonition, but both acquiesce in whatever seems to be the easiest way out of present difficulties.

This is a superficial treatment of delinquency among youth. That it effects some good results is an indication, however, of what a more fully developed service to minors might accomplish for youth and for society. The general social aims of the Brooklyn Adolescent's Court are soundly conceived and should be validated by law. The sponsors of this court are to be commended for their vision and high purpose. But there are purely administrative difficulties encountered in combining the functions of guilt determination and social treatment in the hands of a busy magistrate.

Different procedures fully consonant with the attainment of the aims of this court should be instituted, we believe, in place of the present practices.

#### A DELINQUENT MINOR COURT

What is here recommended is that there be created within the Domestic Relations Court of New York City and corresponding courts in other parts of the State, a new division known as the Delinquent Minor Court coordinate with the Family Court and Children's Court. This tribunal would have jurisdiction over all minors between the ages of sixteen and twenty-one who may be arrested for any offense for which an arrest may now be made.

The organization of the Delinquent Minor Court should comprise two main functional units. The first should consist of examining justices whose duty would be limited to determination of the guilt or innocence of minors brought before the court. The second unit should consist of an administrative board composed of a principal justice and lay associates—the Disposition Board already referred to—whose duty would be to determine what should be done with persons adjudged guilty by the examining justices. The one branch of the court would be judicial, the other administrative.

This basic division of the court organization is proposed for two reasons. In the first place, the task of finding out what was done by the accused differs materially from that of ascertaining what kind of a

person he is and what are his possibilities. In the second place, the offender is dominated by different psychological attitudes at arraignment and later. The examining magistrate, whose dealings with an actual offender relate to establishment of his guilt, confronts him in an atmosphere that is surcharged with fear, nervousness, hostility, or calm defiance, which in many, if not most cases, admits of no fair opportunity to unveil the inner motivations of the offender's conduct. The tensions, resistances and self-defensive attitudes that arise in some at the crisis of arraignment, or the fatalistic resignation and helpless bewilderment that come to others, are unavoidable handicaps to perception of the nature of the accused.

The dramatic and exciting aspects of arraignment before the bar of justice have to subside before one can properly ascertain the capacity or incapacity of defendants, their families and their employers to join in a purposeful plan of rehabilitation. Boys are usually more ready to talk about their acts than they are to explain themselves. They are likely to give a truthful account of what actually happened before they have had an opportunity to fabricate stories.

This unburdening can be induced most successfully when arraignment follows immediately upon arrest. Many examining magistrates are extraordinarily expert in sensing distortions or fabrications and develop great skill in eliciting the truth. The psychological reactions to arraignment are not the same as the deeper personal attitudes which determine conduct

and responses to the more complex matter of social readjustment.

The Disposition Board would meet the boy under more normal circumstances after the initial storm of emotions had passed and the fact of being held to account had been accepted. The psychologist, social worker, and others who would compose the board face the future with the boy. Past events would not be overlooked but they would not be the exclusively focal point of the problem. Whereas the examining justice would have to reach the facts of an offense, the Disposition Board would have to reach the boy. These are functions of a wholly different order. One approach is, in the very nature of things, accusatory and the other requires a friendly, helpful attitude, patience, study and deep understanding of personalities and personality problems.

A delinquency code for minors, such as is advocated here, would clear the way for adoption of new judicial procedures and correctional treatment of offenders, methods that would differ materially from the mixed punitive and rehabilitative measures now in vogue. But as already pointed out, the new code should not interfere with a minor's constitutional right to trial by jury if, upon being informed of his rights, he demands the exercise of it. Thus a youth who is found guilty by an examining justice of the Delinquent Minor Court, despite his plea of innocence, should have the right to contest the issue of guilt or innocence before an inferior court for adults or, if the

charge be for an indictable offense, before the Grand Jury and trial court. At the conclusion of a finding of guilt upon arraignment in the Delinquent Minor Court, the defendant should be informed by explanation made entirely clear to him, that he may accept the jurisdiction of the Court's Disposition Board or he may ask for a hearing on the charge that would be made under the penal code for adults. It should be an invariable rule to explain that the Disposition Board would have full power to release him with or without probation, or to detain him under the Board's supervision for a short or prolonged period, that the delinquency record would not constitute a criminal record. It should be explained with equal clarity what are the stages of a hearing on the criminal charge and the possible outcomes, that is, a possible dismissal of the charge or failure of the Grand Jury to indict, or a finding of not guilty by a trial jury, or a finding of guilt followed by a sentence as indicated in the penal code.

These alternatives are suggested as being necessary to preserve the constitutional rights of an innocent person, accused of a criminal offense, to a trial by jury. This constitutional right would be open only to those who plead not guilty and insist upon a jury trial after being found guilty by an examining justice. A minor who pleads innocence upon arraignment in the Delinquent Minor Court and elects to have his case tried in an adult court should be debarred from later pleading guilty to a lesser charge.

It would be absurd to allow an exception to be made to the jurisdiction of the Delinquent Minor Court on the ground of constitutional right to establish one's innocence before a jury and then to permit a change of plea to guilty on a lesser offense, thereby avoiding a jury trial after side-stepping the jurisdiction of the Minor's Court. But regardless of the accused person's choice of jurisdiction, the initial finding of guilt by the examining justice in the Delinquent Minor Court should bear the same relation to subsequent procedure as if the finding had been made as at present upon arraignment in a magistrate's court.

#### MINIMUM DELAY ESSENTIAL

Arraignment before an examining justice should, as we have indicated, follow immediately upon arrest. This would require that several justices be assigned so as to divide their time between day and evening sessions from early morning until midnight, or after, every day of the week. It would be necessary to provide extensive new detention facilities at the court in order to obviate the need for holding boys at any other place of detention. Minors should never be taken to police stations or to the line-up at headquarters and should not be questioned by the police except in the presence of an examining justice.

The police would deliver arrested minors to the court, make out their arrest record and forthwith present their evidence to the examining justice. It would be the responsibility of the justice to deter-

mine whether the evidence thus presented is sufficient and, if not, to direct the police or other trained persons to conduct further investigations.

Once the offense has been admitted by the accused before an examining justice or, if the evidence of guilt is accepted by the justice despite the accused person's denial and the latter does not demand a hearing in an adult court, the arresting officer would have nothing more to do with the case. In respect to offenses which would amount to felonies and misdemeanors under the penal code, the proposed procedure in the Delinquent Minor Court would effect an enormous saving in the duty and off-duty time of police officers. The procedural maneuvering that is resorted to at present is what keeps the accused long in detention before the sentence is determined and is what wastes the time of the police in reappearances.

The examining justices would hold some offenders to be innocent of the charges placed against them and would release them at once. Others, whom the justices believe to be guilty, would maintain that they were innocent. In making a choice between submitting to the jurisdiction of the Disposition Board or being bound over for a hearing on a criminal charge before the Court of Special Sessions or before the Grand Jury, the accused should be permitted to obtain the advice of counsel, but attorneys should not be permitted to appear before the Disposition Board. Offenders who admit their guilt would be turned over

to the Disposition Board at once for examination and final disposition.

The initial period of detention following arrest should be a time of active, interested treatment and not a listless, nerve-racking wait in a detention prison like the Tombs. The persons in charge would not be keepers but social workers of proved capacities. There would be a psychiatric sensitiveness to attitudes, reactions, relationships revealed in daily observation of each boy. There would be facilities for physical, psychological and psychiatric examination and treatment, making the place of detention to all intents and purposes a diagnostic center. Physical defects, venereal disease, tuberculosis and the like, which are now scarcely noticed in detention prisons, would be given the attention they need. The social investigation and psychiatric examination, now available only after conviction, would be moved up to the forefront of the process and become pivotal instruments of service to offenders.

#### THE DISPOSITION BOARD—COMPOSITION AND FUNCTION

A Disposition Board, numbering five to seven members, and a varying number of deputies, should be appointed by the presiding justice of the Domestic Relations Court. A principal justice, preferably a lawyer, should have charge of the administrative management of the Board, and with the approval of the presiding justice, should appoint the technical staff, social investigators and secretarial assistants.



Members of the Board—the lay justices—should be drawn from such fields as psychiatry, psychology, penology, sociology and education. They should be persons qualified as experts, by training and experience, in dealing with the behavior adjustment problems of youth. Staff assistants should have similar backgrounds. The Disposition Board's operations should be in the nature of a clinical service in making diagnoses of the cases of delinquents. After examinations the Board would make prognoses of treatment. The nature and range of such treatment procedures will be discussed at a later point.

The Board should be housed in the same building with the examining justices. In this building, too, would be the Board's detention quarters, ample in size to make possible such isolation of offenders as the Board would deem desirable. The Board members, deputies and staff should divide their time between day and night duty so as to avoid any delay in investigating offenders while the cases are fresh. Night service would be demanded in order to facilitate the earliest possible consultation with members of an offender's family and friends. Visits to the court can usually be made with less sacrifice after hours of housework or outside employment.

The time required for diagnosis would vary from case to case according to the ease or difficulty of obtaining pertinent information about the delinquent's family and his general mode of life. During the interval, routine medical, psychological and psychiatric

examinations could be completed at the Disposition Board's detention quarters. The more quickly decisions are arrived at the better it is for restless youths. They react favorably to change, new interests, even new responsibilities. They can be swept along with the current toward a new objective but there must be a current, not stagnation.

Reformation of a youthful offender's habits, conduct and attitude toward his social responsibilities is dependent upon the degree in which his self-willing cooperation can be obtained. He can, in many cases, be prompted and encouraged to change his anti-social attitude, but these external aids are of no lasting value unless they are really accepted by the offender. Voluntary compliance to society's rules is an avenue to reform and submission to coercive treatment is not. The question then arises: what is essential for gaining the self-motivated cooperation of offenders? Here we get down to the inner person, his understanding, his wishes, his frustrations, his competence or incompetence, his emotional attachments, and his ambitions or lack of them.

Doctors William Healy and Augusta F. Bronner in their study of delinquency in one hundred thirty-three families<sup>3</sup> point out that "the origins of delinquency in every case unquestionably represent the expression of desires and urges which are otherwise

<sup>3</sup> *New Light on Delinquency and its Treatment*, by Healy and Bronner, published for the Institute of Human Relations, by Yale University Press, 1936. 224 p.

unsatisfied. For the onlooker, delinquency merely signifies misconduct; for the offender it is just as much a response to inner drives and outer stimuli as any other kind of conduct . . . the great driving forces which have strong emotional concomitants are the general fundamental desires for ego and affectional satisfactions. Specifically we must consider the desire for feeling secure in family and other social relationships, for feeling accepted by some person or group, for recognition as having some standing as a personality, for feeling adequate somehow or somewhere. The wish for various sorts of affectional response is allied to, though distinct from desires for recognition, security and adequacy. And there are other urges, such as those for accomplishment satisfactory to oneself, for new experiences and adventures, for having outlets for physical and mental energies, for ownership of possessions, for having, seeing and doing. Normally with increasing age there is also the urge of self-assertion showing itself, for example, in desire for emancipation from childhood and family restrictions—the desire for independence and self-direction. Interferences with these fundamental wishes are felt by the young person as thwartings and deprivations causing keen dissatisfactions . . . some activity must offset dissatisfaction, and delinquency offers one of the possibilities.”

The social setting must also claim attention. In behavior problems the person, the present situation and past situations are bound up with each other. Specif-

ically, the situation in which the offender is located during the process of treatment needs to be brought into the problem and dealt with *as a situation*. This involves other persons and especially the mores and scales of values of other persons on the same social level as the offender—what they regard as important and unimportant, what they regard as praiseworthy or reprehensible. These other persons on the same level constitute a group, of which a specific offender is a member, and this group has more influence than any professional expert or official authority can possibly have in determining the behavior of any of its members. This has been shown in the chapter on “Reformatories and Prisons,” where the ways in which prisoners control each other and themselves are indicated. This group factor should be recognized and brought within the scope of the Disposition Board’s policies.

The task of treatment would be to find out what meaning delinquency has for the offender. Is he finding a substitute for satisfactions which are missing in his unwholesome living? When this discovery is made the Disposition Board, without in any way approving of the delinquent’s values in life, will have entered upon common ground with him. Then the basis for effective action will have been established. From that point the boy can often be persuaded to cooperate in working out a solution of his problem. The boy and the Board will both be aiming at attainment of basic satisfactions for him—interesting activities, a

feeling of being wanted by someone whom he can admire, stimulation of a sense of achievement, approval. If let alone the boy would as readily turn to crime to reach his goal; the Board would seek to find a substitute for crime.

There are persons, we are aware, not a few of them judges, who scoff at the idea that minors over sixteen are not to be considered as law breakers, but as needing assistance and direction. One of them, casting ridicule at the proposal often made of extending the juvenile court age, remarked, "If some juvenile court judges who have left us beautiful dissertations as to the duty of the state to be *parens patriae* to these infants, had the experience of interviewing some hairy-necked seventeen-year-old derelict—lecture him a while on the Christian graces, and the desirability of becoming a good citizen, and while on the surface he showed great respect and attention, just underneath you would see his contempt of such counsels—they would want a provision that would consign this boy to the cold letter of the law."<sup>4</sup>

But this reflects only impatience and hostility. Leonard Mayo, in a discussion of the problems of dealing with the 16-21-year-old offender, at the 1935 Governor's Conference on Crime, the Criminal and Society, said much the same thing but with entirely different implications. "Change of conduct and change of attitude for this group, if it comes at all, is not

<sup>4</sup> Quoted in a report on *The Adolescent Offender*, by a Committee on Criminal Courts, New York, 1923.

going to come in terms of what a judge says to them on the bench, but in terms of a cooperative activity on the part of the whole community. You cannot talk to young men. They can only be changed by personalities that are wholesome and virile, that they can admire, and by activities which include the correction of physical and emotional difficulties.”<sup>5</sup>

Those who have experienced the satisfaction of winning the confidence and cooperation of boys know the futility of either lecturing them or of consigning them to the cold letter of the law; and they know the startling miracles that come with touching the right chord in a boy's make-up.

The Disposition Board would be chiefly concerned with determining how strict must be the control over delinquent youths during the period when helpful, constructive forces were being brought to bear upon them. Doubtless the Board would have to take some account of public feeling about cases in which the offender had caused grievous and irreparable injury to his victim. This would appear to resemble application of the vengeance motive of the penal code. But in most instances it is not unlikely that vicious perpetrators of abhorrent offenses would be found to require long time, if not permanent segregation—not as a matter of exacting vengeance but because of their incapacity for social adjustment.

<sup>5</sup> A conference held at Albany, October, 1935. See Proceedings, pp. 271-275.

## THE POLICE AND THE DISPOSITION BOARD

We think that representatives of the police department should be fully consulted by the Disposition Board in arriving at its determinations regarding offenders and that active cooperation between the Board and the police be maintained at all times. We are not for letting minors off because of their youth but for holding them as a protection to society until measures of rehabilitation are effected. This is, of course, a large order. In making a transition from a system primarily punitive to one primarily reformatory there are bound to be strong doubts and misgivings on the part of the police. It is one thing to confront and subdue reckless, daring, tough youngsters in the act of robbery, and quite another thing to confront them in the security of a place of detention, with friendly proposals to aid and restore them to society. We can foresee sharp differences among those who are bent on rehabilitation and those bent on suppressing offenders who are still on the loose. Even though the police may be somewhat incredulous and lacking in faith as to the possibilities of reform in many individual cases, we think that the Board's decisions as to treatment of offenders should fall within limits acceptable to the police. This may slow down progress in blazing new trails in reformation of youthful offenders, but it is necessary to solid achievement; the police occupy the front line of defense in protect-

ing society against offenders. The Disposition Board, although occupying a less hazardous position, would have the same end in view. Here is a common goal and it must at all costs be approached by cooperative endeavor. Any cooperation, if it works at all, works both ways.

In considering these proposals the police should bear in mind that although more boys would be re-established in the community under varying degrees of restraint, rather than imprisoned in reformatories, fewer unreformable offenders would, as we envisage it, be released upon the community in the mistaken belief that having taken a prescribed dosage of punishment they are ready to take their places with good citizens.

The police of New York City and other cities in this country have made more definite and solid progress during the past generation than all the other criminal justice agencies combined. We do not fear that the police would fail to cooperate with a competent Disposition Board that was fully alive to its responsibility for the protection of society.

Reclamation of delinquent youths is the principal end in view and nothing in the criminal justice procedure should be permitted to counteract a possible attainment of that objective. However, it will be found impossible to reclaim all delinquents even under the best conceivable system. It is equally important, therefore, that nothing in the criminal justice procedure should allow the unreclaimable to re-



sume their attacks upon the security of society. For these indefinite segregation must take the place of relatively short prison terms.

#### TREATMENT—METHODS AND FACILITIES

Youthful offenders between the ages of sixteen and twenty-one may be grouped, roughly, into four main classes according to their capacities for rehabilitation:

1. The Delinquents of abnormal personalities who cannot or will not make a social adjustment no matter what efforts are made in their behalf. Drs. William Healy and Augusta F. Bronner estimate that "not far from 20 per cent of delinquents in any unselected series" would properly belong in a group whose members "cannot be considered hopeful for treatment under even ordinary good condition of family and community life."<sup>6</sup>

2. Those who require a somewhat prolonged period of work, training and supervised recreation under the continuous control of competent leaders.

3. Those who, if they be lifted out of their accustomed social surroundings where they have been failing, can continue with their schooling or their employment if they have jobs.

4. Those who can continue in their usual environment either with their families or in foster homes.

This classification suggests the nature of the controlled environments which we believe may well be provided for the treatment of delinquents:

<sup>6</sup> *New Light on Delinquency and its Treatment*, Yale University Press, 1936, pp. 161-3.

1. The unrehabilitable must be segregated indefinitely in prisons or in penal colonies. The conditions of living could be improved for these, we believe, if protection of society and not vengeance be the controlling motive. The difficulty of recognizing an unrehabilitable person, except on the basis of experience with him, must, of course, be admitted.

2. The second class, composed of the less tractable though ultimately reformable offenders, should be dealt with in small groups on the basis of vocational aptitudes and interests. For this group it is suggested that there be established special training schools and work camps, and work projects sufficiently isolated to provide a completely controlled environment. Residence, work and training would be closely supervised and the period of detention should be long enough to work out a satisfactory adjustment in each case.

3. The third group of more promising offenders whose chief need is better environmental opportunities should be placed in hostels, presently to be described, which would provide controlled living conditions. Delinquents in this group would be assigned by the Disposition Board to an approved hostel, publicly or privately operated, having accommodations for a small number of youths. During residence at a hostel delinquents should be permitted to go out to school or civil employment, but they would have both the advantage and discipline of definite supervision by the house master. Detention at a hostel would amount to probation limited by a condition as to residence.

4. Members of the fourth group would need a

modified form of personal supervision in a normal environment. They would be released under the terms of ordinary probation to reside with their families, in foster homes or in rented quarters, subject to the approval of the probation officer in charge.

Offenders assigned to the different places of detention should remain under the continuing jurisdiction of the Disposition Board. Transfers from one kind of control to another would depend upon the success or failure of adjustment. Thus a delinquent who might fail to improve would be moved to the next more rigorous control or to permanent segregation. Conversely, one showing definite improvement would be transferred to conditions of greater freedom or would be released.

It is recognized that the suggestion for group two, composed of the less tractable though ultimately reformatable offenders, calls for methods of treatment relatively new to this country. These boys would require a completely controlled environment and close supervision during the period of detention. For them special training schools and work camps are suggested which offer opportunities for re-education within a disciplinary atmosphere. As to the training schools, the excellent equipment that now exists in reformatories and like institutions could become an instrument of great value if used in an atmosphere predominantly educational rather than institutional. Emphasis would not be upon the fact that the persons

taught are being punished, but on the possibilities of a preparation for something worth while. Discipline would come not only from the controlled environment and the supervision of the school staff, but also would grow out of the cooperative efforts of the boys working together.

As indicated, the needs of other boys in this second group could best be met by work camps where numbers of boys would work together on projects of local or general usefulness. The boys would benefit by a change of scene and activity, but more particularly from the opportunity afforded of directing their energies and interests into new and fresh channels. These camp units, however, would have to be relatively small in order to avoid becoming administratively unwieldy and to prevent the problems of the individual boy becoming submerged in the group. They would be well supervised and be composed of boys selected as likely to respond to such treatment. The ideal in purpose and quality of leadership is in actual operation in some of the Borstal Institutions in England, notably at North Sea Camp, near Boston, Lincolnshire, where life is shared as in any school, teachers and pupils partners in a common effort.<sup>7</sup>

The third group of more promising offenders also requires methods of treatment virtually untried in the United States. For these we suggest hostels, which differ from special work camps and training schools in

<sup>7</sup> For a discussion of Borstal Institutions see an article in the October, 1937, issue of the *Contemporary Review*.

that they would be smaller, would permit participation in ordinary community life, while at the same time providing controlled living quarters.

Hostels, by whatever name, would be homelike places where small groups of boys could live in normal and cheerful surroundings and paying their way as far as they are able. They would work or go to school and otherwise have natural community contacts. The person, or persons, in charge of these hostels must be, as we have stipulated, of the highest caliber and capable not merely of enforcing supervisory rules, but of winning the confidence of the boys under them and inspiring them to new goals. A sufficient number of such hostels would enable groupings of boys to be made along scientific lines and different types of boys would be dealt with in different ways. In every instance boys would be individualized in the total scheme and case work principles would be observed.

Some of these hostels would be wholly or nearly self-supporting. Others could not be. All of them, in their way, would be cooperatives. Any failure of willing cooperation would of necessity eliminate residence and require other modes of treatment. Although most of them would be in city settings, some of them would be in the country, either for purposes of convalescence or for special treatment, or to remove boys more completely from their former environments and associates.

Hostels similar in intention to those which we propose have been in operation in South Africa since 1910

and in England for a number of years. The former are privately managed by a Lads' Hostels Committee and are partially subsidized by the government. The problem in South Africa is vastly different from our own, both in its extent and complexity, but it is the same in principle.<sup>8</sup> The hostels there are effectively used for boys who need protection from their ordinary environment, or who have no homes, and for boys who require supervision during a probationary period. Two of them have been inspected by one of the authors of this report and consultations were held with the chairman of the Lads' Hostels Committee and also with governmental officials. The hostels in England are under various auspices and they differ widely in their effectiveness depending somewhat upon size, but more especially upon leadership.<sup>9</sup>

These suggestions concerning the treatment of the boys in the four groups, only hint at the possibilities of providing effective treatment for delinquents. The approach must be one of experimentation, based on the most careful consideration of specific proposals by qualified persons. Leadership of an especially high order is necessary for the success of any treatment program. These facts we recognize fully and desire to emphasize strongly.

We are not at all hopeful that the State could

<sup>8</sup> See report of Lads' Hostels Committee, Explorations Building, Commission Street, Johannesburg, Transvaal, S. Africa.

<sup>9</sup> See *Directory of Probation Officers, Home Office Schools, Probation Homes and Hostels and Borstal Institutions, 1937*, His Majesty's Printing Office, London.

be immediately persuaded to establish a system of special work camps and training schools, or a chain of hostels. It is difficult enough to obtain public funds required for capital expenditures in enlarging and improving the existing mass-detention facilities. We believe, therefore, that as an initial demonstration it will be necessary for private interests to establish work camps, training schools and hostels, each open to a limited number of youths on commitment from the Disposition Board of a Delinquent Minor Court. It is reasonable to expect, however, that the State would agree to grant subsidies to help take care of the operating and maintenance costs of such establishments, basing the allotments on the number of delinquents accommodated. The per capita cost to the public treasury of maintaining the higher type of reformatory training school is in the neighborhood of \$800 per annum. This sum might well be sufficient to aid in the reclamation of several boys in the work camps, training schools, hostels and foster homes which have been described. Certainly there would be substantial savings to the State should boys be rehabilitated following the first arrest, in contrast with the heavy costs of re-arrests, trials and lengthy incarceration under the present system.

## VIII

### Conclusion

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OUR purpose has been to suggest better methods for the *cure* of crime by correction of youthful offenders at the beginning of their careers. *Crime prevention* has not come within the scope of this study except as the cure of an offender prevents continuation of offenses on his part and eliminates the danger of his infecting others with ideas of delinquency. A most important contribution to a solution of the crime problem may be made by strengthening the crime preventive influences of the home, church, school and social welfare agency. Although we fully acknowledge the wisdom of the old adage about an ounce of prevention, we must face the ugly fact that all too frequently the ounce is lacking and the pound of cure becomes necessary. Our position is that a pound of cure is worth more than a hundredweight of retributive punishment.

The state is now paying heavily for every boy whom it adjudges, by more or less inflexible mechanical arrangements of law, to be delinquent and to require incarceration in a penal institution. It comes in contact with many others who represent as much or even more social need, and who, because of technical



definitions of offenses, are spared the full brunt of official, legal disapproval. These are merely frightened or exposed to contaminating influences in a partial experience of the legal process and allowed to return, with little or no aid, to the circumstances and conditions of their delinquency.

Many persons passionately believe in the virtues of punishment. They suppose that it will serve as an unforgettable lesson for the future. It is true that the lesson is never forgotten, but it is not true that imprisonment makes better men of those who feel its sting. Under the present arrangements convicted young criminals are released from reform schools and prisons during their adolescence or not later than their young manhood. The terms of imprisonment are fixed according to the offenses; the worst are returned to a free society about as soon as the best. But the worst will not have been improved and the best will have run serious risk of permanent contamination.

Treatment under the present system is admittedly negative and, in many instances, degenerating. This system functions on abstract principles of retribution and deterrence, untuned to the facts of human nature and unconcerned with the possibilities in the persons and situations dealt with by it. But in spite of the plain logic of the newer and more realistic ideas of treating rather than punishing youths who offend the peace and rights of others, the plea of diverting the money now used for socially useless and even harmful ends to socially useful and personally constructive

ones remains a mere plea. It goes unmet not for lack of agreement with the principle and hope of it, but for lack of a plan to put it into trial and operation. A practical plan would require men of a type and training not now available in sufficient numbers, but even the necessary plan is lacking at present. Men could be found and trained if a proper plan could be projected.

Such a plan, while constantly being dreamed of, is blocked at the outset by seemingly insuperable factors. First of all the traditional, legal process has to be changed, and this requires that public opinion regarding the treatment of delinquency be changed. Something else must be made legal, at least for purposes of experiment and demonstration.

The conclusions of this study are based upon the cardinal principle that the difficult task of reforming delinquent youths should be undertaken under environmental conditions that are favorable rather than under those that are degrading. Offenders must be set on new paths and better ones. This reformative process should begin, moreover, without delay so as to avoid further psychological frustration of boys who are off to a bad start. For what they need beyond everything else is a new start toward a goal which they can recognize as being advantageous to them.

The period immediately following arrest is the most fruitful time for strengthening the psychological foundations upon which offenders may be encouraged to build. A laggard criminal justice system

occupied with seeking first a measure of punishment wastes both time and opportunities which are precious to the task of rehabilitation. A system better adapted to the service of society in reclaiming delinquent youth would move swiftly in the direction of reform. It need not be characterized by softness or sentimentality; it could and should be firm in loading upon offenders new responsibilities under strict, though encouraging, supervision.

The principle implied in these suggestions is one of a variety of treatment facilities to meet the needs and conditions of the variety of young persons, discovered by their acted announcement of unadjustment and failure as being in need of help. It says: in place of rigid inflexibility on the part of society, put flexibility; in place of anger and primitive impulse at retaliation, put understanding and patience; in place of a desire to punish, put a will to help. Society can well afford, by reason of its might and age, to do all this. It has nothing to lose, and one generation of youth really served would go a long way in solving the crime problem. Responsibility for crime is now placed fully and solely upon the ill-equipped youths brought up under the most adverse conditions, and adjudged "criminals." It cannot be done rightly or fairly.

The services to delinquent youth, which have been suggested in terms of treatment, are more likely to evoke penitence, thought, resolution and purposeful effort than the present system does. It is not merely

a change in method that is needed, but a change in spirit, approach and attitude toward offenders. This is true for all offenders, but the contention here is limited to youthful offenders, and in respect to them there can be no question about the truth and relevancy of the principle involved.

The application of measures of rehabilitation, based on examination by experts under favorable circumstances, would be substituted for guesswork about offenders now made in an atmosphere so freighted with fear and resistance as to make the guesses almost invariably ill-founded. We would introduce the facilities of psychotherapy, education, guidance and job placement at the outset in preference to making these efforts in a reformatory and after release. In fine, we would turn the system about, changing the primary objective of justice from punishment to rehabilitation and using coercive methods for the protection of society only as a last resort.

What we propose is that society create new legal machinery and authorize new methods for dealing with youthful offenders who, although they can no longer be treated as children, are yet too immature and undisciplined to fulfill unaided the responsibilities of adulthood. Errant youth challenges government and all other social institutions to join in preparing it for manhood in preference to blasting it with a criminal record and loss of citizenship before citizenship is ever attained.

This is the most that can be done to convert youth-

ful lawbreakers into useful citizens. It should be the least that is attempted. There is every reason for concentrating on efforts to turn minors back from the threshold of prison. In so far as the task can be done society will be the gainer. If, however, the offender is either unwilling or unable to seize an opportunity fairly given, the gates of prison or penal camp must be closed upon him and stay closed. Segregation of those who are either too weak or have become too vicious to discharge their obligations toward a free society would be fully justified.

THE END















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